

# CARLETON COLLEGE

NORTHFIELD, MINNESOTA 55057

Page 2 of 2

Abraham Stein Eichner

ID: 1948408 D.O.B.: 11 Jun

			CRED ATT	CRED CMPL	GRADE PTS	TERM GPA	CUM GPA
Fall Term 2016 Off-Campus Study							
OCF	1163	CIEE N Ireland Soc, Con, Peac			0.00		
		Cult. & Conflict in N. Ireland	A	7	7	0.00	
		International Relations	A	7	7	0.00	
		Middle Eastern Politics	A	7	7	0.00	
		Asylum and Migration	A	6	6	0.00	
		Term Totals:	27	27	0.00	0.00	3.82
		Cumulative Totals:	135	135	390.12		3.82
Winter Term 2017							
MATH	211	Multivariable Calculus	A	6	6	24.00	
POSC	320	Authority & Democ in Mid East	A	6	6	24.00	
WGST	110	Intro Women's & Gender Studies	A	6	6	24.00	
		Term Totals:	18	18	72.00	4.00	3.85
		Cumulative Totals:	153	153	462.12		3.85
Spring Term 2017							
ECON	111	Principles of Microeconomics	A	6	6	24.00	
PE	227	Ultimate Frisbee:CUT&GOP	S	0	0	0.00	
POSC	230	Methods of Political Research	A-	6	6	22.02	
POSC	246	Politics Middle East II	A	6	6	24.00	
		Term Totals:	18	18	70.02	3.89	3.86
		Cumulative Totals:	171	171	532.14		3.86
Fall Term 2017							
ECON	274	Labor Economics	A	6	6	24.00	
HIST	171	Latin America and the U.S.	A	6	6	24.00	
POSC	358	Comparative Social Movements	A-	6	6	22.02	
		Term Totals:	18	18	70.02	3.89	3.86
		Cumulative Totals:	189	189	602.16		3.86
Winter Term 2018							
HIST	259	Wmn S Asia:Histories & Narrtv	A-	6	6	22.02	
POSC	400	Integrative Exercise	S	6	6	0.00	
		Term Totals:	12	12	22.02	3.67	3.85
		Cumulative Totals:	201	201	624.18		3.85
Spring Term 2018							
PE	227	Ultimate Frisbee:CUT&GOP	S	0	0	0.00	
POSC	275	Black Rad Pol Thght: 1919-1969	S*	6	6	0.00	
RELG	240	American Relg & Economic Life	A	6	6	24.00	
		Term Totals:	12	12	24.00	4.00	3.86
		Cumulative Totals:	213	213	648.18		3.86

Awarded Bachelor of Arts on 09 June 2018

Major: Political Science/IR

Graduated with Honors: Magna Cum Laude

-----ACADEMIC HONORS-----	
Annual Dean's List	15 Sep 2015
Annual Dean's List	13 Sep 2017
Phi Beta Kappa	28 May 2018
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END OF DEGREE RECORD, 11 Jun 2018, CARLETON COLLEGE, NORTHFIELD, MN

Emy J. Farley, Registrar

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Abraham S. Eichner

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## CARLETON COLLEGE TRANSCRIPT INFORMATION

[www.carleton.edu](http://www.carleton.edu) (507) 222-4289

## GRADES

July 1986-present  
(Discontinued July 1995)

A+	4.33		
A	4.00		
A-	3.67	S	Satisfactory (A-C)
B+	3.33	CR	Credit (D)
B	3.00	NC	No Credit (F)
B-	2.67	P	Pass (A-D)
C+	2.33	*	Student opted ungraded
C	2.00	L	Laboratory completed
C-	1.67	CNT	Continuing course
D+	1.33	CI	Continuing Integrative
D	1.00	DRP	Dropped without penalty
D-	.67	EXT	Extension granted
F	.00	ATT	Attended

July 1978 to June 1986

A+, A, A-	4.0	P	Pass (A-D)
B+, B, B-	3.0	NC	No Credit (F)
C+, C, C-	2.0	W	Withheld temporarily
D+, D, D-	1.0	DRP	Dropped without penalty
F	0.0		

July 1971 to June 1978

A+, A, A-	3.0	S	Satisfactory
B+, B, B-	2.0	U	Unsatisfactory
C+, C, C-	1.0	W	Withheld temporarily
		DRP	Dropped without penalty

July 1961 to June 1971

A#, A, A-	3.0	D#, D, D-	0.0
B#, B, B-	2.0	F	-1.0
C#	1.5	W	Withheld temporarily
C, C-	1.0	P	Pass

## COURSE NUMBERING SYSTEM

July 1992 – Present

000-199	Introductory courses
100	First-year Argument & Inquiry Seminar (Fall 2010)
200-299	Intermediate courses
290	Independent Reading
291	Independent Study
292	Independent Research
293	Internship (Discontinued July 2012)
298	Junior Colloquium
300-399	Advanced courses
390	Independent Reading
391	Independent Study
392	Independent Research
393	Internship (Discontinued July 2012)
395	Advanced Level Seminar
398	Senior Colloquium
399	Senior Thesis
400	Integrative Exercise

1000-1999 Graduate Courses

F following a course number indicates a FLAC (Foreign Language Across the Curriculum) course

J following a course number indicates a juried lesson

L following a course number indicates a required 0 credit laboratory

S following a course number indicates the course was taken at St. Olaf under the cooperative agreement

We have been approved by NCACS (now HLC) to offer a limited number of courses for graduate credit.

September 1961 - June 1992

1-29	Introductory Courses
30-49	Intermediate Courses
50-60	Advanced Courses
65	Advanced Level Seminar
66	Tutorial
70,71,75	Independent Study, Research, Internship
90	Integrative Exercise
100-199	Laboratory Course

S following a course number indicates the course was taken at St. Olaf under the cooperative agreement

## Credits

A Carleton undergraduate course is the equivalent of a semester course. The standard course unit is 6 credits; for purposes of transfer evaluation, 6 credits are comparable to 3 1/3 semester credits. Although all standard courses carry equal credit, laboratory courses at Carleton are equivalent to those in other colleges that grant 5 semester credits. Transfer credits, non-Carleton off-campus study, and credits which are taken on a S/CR/NC basis do not count in GPA computations. Graduate courses are recorded in quarter credits; 3 quarter credits are the equivalent of 2 semester credits.

## Normal Load

The normal course load is three full courses (18 credits) per term. Students are permitted to take as few as 12 credits per term and as many as 22. With permission from the Academic Standing Committee, they may take 24 credits in a term. The degree requires 204 credits (34 courses) plus an integrative exercise. Beginning September 1985, credits are awarded for the integrative exercise, bringing the total requirement to 210 credits.

## Grading System

GPA is based on grade points divided by graded course credits attempted. Credit for work graded S/CR counts toward graduation but is not used in computing GPA. Credit for work graded NC is also not used in computing GPA. When a course is repeated only the last grade is used in final cumulative GPA computations.

## Accreditation

Accredited by several associations, including the Higher Learning Commission (since 1913), Carleton offers the Bachelor of Arts degree. Carleton's Education licensure programs are fully accredited by the Board of Teaching of the State of Minnesota. Carleton is also a member of the Associated Colleges of the Midwest (ACM).

## Concentrations and Certificates of Advanced Study in Foreign Language &amp; Literature/Area Studies

A Concentration provided an opportunity to bring focus to students' choice of electives through an integrated interdisciplinary program that complemented the major. The Certificate of Advanced Studies in Foreign Language required satisfactory completion of six courses in the chosen language or area studies group beyond 103 (204 in Asian Languages). (Discontinued September 2017)

## Academic Calendar

Carleton College operates under a three-term system of 10 weeks each term with 210 minutes of class time per week.

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**UNIVERSITY OF MICHIGAN LAW SCHOOL**  
625 South State Street  
Ann Arbor, Michigan 48109

May 23, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to give my strongest recommendation to Abe Eichner, who is applying to you for a clerkship. Abe is extremely strong analytically and a fine, crisp writer, with a down-to-earth, unassuming manner. He is in the very top group of students I have taught since arriving at Michigan Law over 20 years ago.

I got to know Abe as a student in my Legislation and Regulation class in the winter of 2022. Legislation and Regulation is a course that combines core administrative law concepts with a grounding in statutory interpretation and an introduction to legislative process. Even as a 1L in this large and talented class that included many upperclass students, it was clear early on that Abe was among the best, rapidly assimilating the material and perceiving a legal framework's implications for the administrative state, regulated entities, and those who hope to benefit from a regulatory structure. Abe really shone on the fully blind-graded final exam, where he received the top score in the class by a significant margin, earning an A and the so-called "Certificate of Merit" for the top-performing student in the class. His analysis on this time-limited exam was thorough and nuanced, while managing to be concise as well. In answer to one question, he wrote a particularly strong answer analyzing heavy use of interpretive canons by courts prior to affording an agency position Chevron deference. Especially given that he was only a 1L at the time, he also showed great maturity in assessing the strength of particular legal arguments.

Abe's very strong performance in my class was typical; he has continued to perform at a very high level, earning certificates of merit in other classes and, as of this writing, a 3.97 GPA overall at a school very committed to maintaining a grading curve. I expect Abe to graduate at or very near the top of his class. I am also looking forward to supervising an independent study for Abe as he revises and develops an insightful project on the inclusion of so-called "climate co-benefits" in regulatory analyses of proposed air pollution regulation.

At a personal level, Abe is thoughtful and engaging, with a serious manner. He came to law school after a few years working on policy and in government; he is committed to working to serve the public interest, whether through government work or work through a non-profit. My sense is that he gets along well with his peers. I believe he would be a wonderful addition to chambers, and I urge you to give him very serious consideration.

Very truly yours,

Nina A. Mendelson  
Joseph L. Sax Collegiate Professor of Law

Nina Mendelson - nmendel@umich.edu - 734-936-5071



## Department of Energy

Washington, DC 20585

April 11, 2023

Dear Judge:

I write in support of Abe Eichner's application for a Federal clerkship.

Abe Eichner was a summer legal intern for the Offices of the Assistant General Counsel for Enforcement and the Assistant General Counsel for Litigation in the Office of the General Counsel at the United States Department of Energy (DOE) from May to July 2022. I was Abe's supervising attorney during his time with the Office of the Assistant General Counsel for Litigation. I coordinated Abe's litigation assignments with the other litigation attorneys and provided Abe with my own assignments.

During Abe's time with Litigation, Abe provided high quality work product and performed at a very high level for an intern. Abe's assignments were completed in a timely manner and his finished work product greatly assisted the Litigation group with its cases. Abe's work product was very detail-oriented, thorough, and thoughtful. In his work product, Abe showed a firm grasp of the legal issues with clear, concise writing. Abe's research skills were also impressive as he was able to quickly delve into the issues for his assignments through careful, targeted research. Abe's demeanor was always professional and personable. In fact, Abe easily collaborated with the litigation attorneys and was quick to engage with his analysis of a legal issue. Throughout the internship, Abe also demonstrated an affinity for government work and environmental law and expressed interest to me in pursuing a career of public service in the future.

While working with Litigation, Abe handled adeptly an assortment of assignments related to active cases within the group. Abe assisted with drafting motion for summary judgment and discovery requests for an Equal Employment Opportunity Commission constructive discharge case and a motion for summary judgment in a Freedom of Information Act (FOIA) case. Abe took the lead on one FOIA case and drafted an answer to a FOIA complaint. And Abe assisted also in drafting a motion for summary judgment in Energy Policy and Conservation Act (EPCA) challenge to a DOE rulemaking on short-cycle dishwashers.

In addition, during his time in the Office of Enforcement, Abe wrote series of memoranda assessing the risk a recent Fifth Circuit decision posed to EPCA enforcement actions before administrative law judges. In his work product, Abe recommended a course of action to be followed in an EPCA enforcement action.

Abe was very responsive and always willing to ask questions regarding his assignments to effectively hone the scope of the work. I was most impressed at Abe's ability to get up to speed on areas of the law that he did not have prior experience in to assist on projects. In one project in particular, the Office of the General Counsel was looking for an intern to conduct an analysis of the Department's authorities to make grants under the new Bipartisan Infrastructure Law. Based on Abe's performance with his Litigation assignments, I recommended him for this assignment outside of Litigation and Enforcement. Abe reviewed the new legislation and agency authorities and did an excellent job synthesizing all the information. Abe produced work product that was

easily digestible and could be incorporated into advice for client program offices. Based on that experience, I believe Abe will bring this same ability to his work as a law clerk.

It was a pleasure to work with Abe during his internship with the Office of the Assistant General Counsel for Litigation last summer. I would work with Abe again and I believe Abe would be an asset to any court or organization in his post law school endeavors. I wholeheartedly recommend Abe for a clerkship.

Sincerely,

*Kristin Koernig*

Kristin N. Koernig  
General Attorney

THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
ANN ARBOR, MICHIGAN 48109-1215

ANDY BUCHSBAUM  
Adjunct Professor of Law

June 10, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Abe Eichner for a judicial clerkship. I am a lecturer at the University of Michigan Law School, where I have taught environmental law and federal litigation courses for over 25 years. Until recently, I also worked full-time for the National Wildlife Federation, directing various national and regional offices and legal and policy programs. In those roles, I have had the chance to supervise, work with and assess many law students. Abe's work is among the best I've seen.

Abe is a student in my Environmental Law: Gaps and Unintended Consequences seminar this semester, where he has excelled. The course is a mixture of lecture and discussion culminating in a challenging final project: identifying and analyzing a significant gap or unintended consequence in an environmental statute and then proposing regulatory, judicial or legislative changes to address that gap or consequence. The assignment also requires students to assess the gaps or unintended consequences of their proposed solution. For many students, this paper is particularly difficult because it asks them both to do a deep analysis of the current law and to use their creativity and judgment to determine how the law might best be changed.

Abe has prepared a discussion paper and presented it to the class, and his work is outstanding. His topic is co-benefits for greenhouse gas pollutants under different regulatory schemes in the Clean Air Act. The law here is highly complex, as are the science and economics—and Abe has done a masterful job in his research, analysis and presentation. His exploration of the statute, rules and caselaw is excellent, thorough and insightful. And he has gone a step beyond, exceeding all expectations for this course: he conducted a review of over one hundred cost-benefit analyses (CBAs) prepared for Clean Air Act rulemakings and is incorporating the results of that review into his project. This is cutting-edge research; to my knowledge, no one has done such a comprehensive investigation of Clean Air Act CBAs or applied them to the co-benefits issue.

In addition to his top-notch paper, Abe is a frequent and thoughtful participant in class, reflecting a serious mind and judgment beyond his years.

I highly recommend Abe for a judicial clerkship. Abe is very smart – he catches on quickly and then dives in deeply and thoughtfully to understand and improve an idea or theory. He is an enthusiastic and thorough researcher, which he uses to inform his ideas. He looks at any question from every angle and develops a nuanced, sophisticated and mature understanding of the context and the potential solutions. He is an original thinker, willing and able to consider and develop innovative approaches and ideas. At the same time, he is disciplined, always testing his ideas and arguments, willing to modify them to make them most effective. And he's a wonderful colleague; his classmates like working with him because of what he produces himself and the supportive way in which he helps all those around him be better in their work.

Abe will be invaluable to any office fortunate enough to hire him. Please do not hesitate to contact me if you have any questions.

Sincerely,

Andy Buchsbaum

Andrew Buchsbaum - [buchs@umich.edu](mailto:buchs@umich.edu)

**ABE EICHNER**

222 Vance Street, Chapel Hill, NC 27516  
919-448-1768 • eichnera@umich.edu

**Writing Sample**

I wrote the following petitioner's brief for the quarterfinal round of Michigan Law School's 98<sup>th</sup> annual Henry M. Campbell Moot Court Competition. This brief reflects solely my own research, writing, and editing. I have omitted the discussion of the first question. The questions presented were:

- (1) Did the Consumer Financial Protection Bureau adjudication and assessment of a civil penalty under the Consumer Financial Protection Act, 12 U.S.C. §§ 5531, 5536, implicate the Seventh Amendment right to a civil jury trial?
- (2) Did the dual-layer removal scheme for administrative law judges and Merit Systems Protection Board members violate the separation of powers?

## STATEMENT OF THE CASE

### Introduction

Respondent Consumer Financial Protection Bureau (“CFPB”) violated the constitution when it unilaterally determined that Sutherland Bank (“Sutherland”) broke the law, assessed Sutherland millions in penalties, and then upheld its own determination. Sutherland was never allowed to present its case before a jury. This in-house process represents a dangerous encroachment by the administrative state onto two constitutional guarantees of liberty.

First, Sutherland was unconstitutionally denied a jury trial under the Seventh Amendment, because the fraud alleged by the CFPB is closely analogous to common law fraud. Second, the Administrative Law Judge (“ALJ”) that found Sutherland liable was sheltered from presidential control by two layers of removal restrictions. Because CFPB ALJs have extensive authority, these restrictions unduly burden the President’s ability to execute the law.

### Statement of Facts

Sutherland Bank provides retail banking, stock brokerage, and wealth management services to more than 11 million customers nationwide. *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 2-3 (12th Cir. 2022). The CFPB enforces consumer protection statutes, including the CFPA. 12 U.S.C. § 5565. The CFPB opened administrative proceedings against Sutherland in 2019. 505 F.4th at 2. After an administrative trial, a CFPB ALJ issued a Recommended Order in 2020 finding that Sutherland engaged in deceptive acts and practices in violation of the Consumer Financial Protection Act (“CFPA”), which prohibits “any unfair, deceptive, or abusive act or practice”.<sup>1</sup> *Id.* at 4; 12 U.S.C. §5536(a)(1)(B). The Recommended

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<sup>1</sup> The CFPB also found that Sutherland violated the Electronic Fund Transfer Act and Fair Credit Reporting Act. 505 F.4th at 4. Sutherland waived its appeal to those claims on the Seventh Amendment issue. *Id.*



Order assessed economic damages totaling \$8,139,894.58 and civil penalties of \$4,155,500 and enjoined Sutherland from operating its Accounts Protection Program. 505 F.4th at 5. Thandiwe Pierson, Director of the CFPB (“the Director”) then upheld the order. *Id.*

The ALJ who issued the recommended order is removable only “for good cause” by the Merit System Protection Board (“MSPB”). 5 U.S.C. § 7521. Members of the MSPB are themselves only removable by the President for “for inefficiency, neglect of duty, or malfeasance in office.” 5 U.S.C. § 1202(d).

### **Procedural History**

After the ALJ’s Recommended Order in March, 2020, Sutherland appealed the Recommended Order to the Director. 505 F.4th at 5. The Director upheld the Recommended Order with a Final Decision in October, 2020. *Id.* Sutherland appealed to a Twelfth Circuit panel, who found in favor of the CFPB on both constitutional issues. *Id.* at 5–6. Sutherland then appealed to the Twelfth Circuit for rehearing en banc, which it granted. *Id.* at 6. In 2022, the Twelfth Circuit sitting en banc found in favor of the CFPB. *Id.* Sutherland petitioned for a writ of certiorari to this Court, which was granted in 2022. Order Granting Writ of Cert.

## **DISCUSSION**

### **I. CFPA DECEPTION CLAIMS FOR CIVIL PENALTIES REQUIRE A JURY TRIAL**

[Omitted]

### **II. TWO LAYERS OF REMOVAL RESTRICTIONS PROTECTING CFPB ADMINISTRATIVE LAW JUDGES VIOLATE THE SEPARATION OF POWERS**

This Court should hold that such a powerful official as a CFPB ALJ cannot be insulated from democratic accountability by two layers of removal protections. “CFPB brings the coercive

power of the state to bear on millions of private citizens and businesses, imposing potentially billion-dollar penalties *through administrative adjudications* and civil actions.” *Seila*, 140 S. Ct. at 2200 (emphasis added). This Court should therefore strip one layer of removal restrictions to reestablish the President’s ability to “take Care that the laws be faithfully executed....” U.S. Const. art. II, § 3.

The President cannot execute the laws alone, and the Framers expected that the President would require the assistance of subordinate officers. *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2203 (2020). Implicit within the Take Care Clause is therefore the President’s power to control, and consequently remove, most subordinate officers.<sup>2</sup> *Seila*, 140 S. Ct. at 2191. Otherwise, “the buck would stop somewhere else.” *Id.* Here, CFPB administrative law judges are removable only for cause, which must be determined by the MSPB. 5 U.S.C. § 7521. In turn, MSPB members may only be removed by the President for cause. 5 U.S.C. § 1202(d). Though this Court recently struck down dual for-cause removal limitations for some other officers, it has deferred determining whether dual limitations on CFPB ALJs are constitutional until now. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (1997).

Previously, this Court has recognized only two exceptions to the President’s general removal power: multi-member bodies of experts balanced along partisan lines, *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935), and inferior officers with no policymaking authority, *Morrison v. Olson*, 487 U.S. 654 (1988). In both cases, the President did not need removal authority over the officer in question to execute the laws. Neither exception applies here because CFPB ALJs are single individuals with extensive policymaking authority. Further, this

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<sup>2</sup> This Court recently determined that ALJs are officers, and not mere employees. *Lucia v. S.E.C.*, 138 S.Ct. 2044 (2018).

Court should not craft a new exception, as dual for-cause restrictions for ALJs have no basis in history or constitutional structure.

**A. Existing Exceptions to the President’s Removal Power do not Apply to Dual For-Cause Removal Restrictions on CFPB ALJs**

“As [the President’s] selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he cannot continue to be responsible.” *Myers v. United States*, 272 U.S. 52, 117 (1926); see *Seila*, 140 S. Ct. at 2203, 2206 (holding presidential removal power “is the rule, not the exception,” because the President is “the most democratic and politically accountable official in government.”) Since this Court set out that general rule in *Myers*, it has permitted only two exceptions. 272 U.S. 521; *Seila*, 140 S. Ct. at 2193 (reaffirming that this Court has only approved two exceptions to the general removal power). However, neither the holdings nor the spirit of these exceptions applies to the instant case.

First, in *Humphrey’s Executor*, this Court upheld one layer of for-cause removal restrictions on the Federal Trade Commission. 295 U.S. 602. The Commission consists of five members, balanced along partisan lines, and appointed to staggered terms. *Id.* at 620. This institutional structure was designed so that “ambition [will] counteract ambition,” and thus direct Presidential oversight was less necessary. *Seila*, 140 S.Ct. at 2202 (quoting *The Federalist* No. 51 (J. Madison)). Further, the President could typically appoint a majority of commissioners within a four-year term simply by waiting for their terms to expire.

This exception does not apply to for-cause removal restrictions for CFPB ALJs. Unlike Federal Trade Commissioners, CFPB ALJs are single officers appointed to theoretically unlimited terms, and are not balanced along partisan lines. 5 U.S.C. § 7521(a). In practice, this means that a President might be stuck with an ALJ from the opposing party who may strain against the President’s policy agenda. The President is powerless to remove the ALJ unless the MSPB

determines there is cause to do so. *Id.* And unlike within the Federal Trade Commission, ALJs cannot restrain the actions of each other.

Second, in *Morrison* this Court upheld for-cause removal restrictions on an independent counsel with the ability to investigate other executive branch officials. 487 U.S. 654. The independent counsel performed “only certain, limited duties.” *Id.* at 671. She did not have “any authority to formulate policy,” her appointment was temporary, and her jurisdiction was limited to that granted by a court pursuant to a request by the Attorney General. *Id.* at 671-72. Further, as in *Humphrey’s Executor*, the independent counsel enjoyed only one layer of for-cause restrictions. 295 U.S. 602; 487 U.S. 654. She was removable for-cause by the Attorney General, who was in turn removable at-will by the President. 487 U.S. at 696. This removal authority remains the “most important[]” means of supervision, and “provides the Executive with substantial ability to ensure that the laws are ‘faithfully executed’ by an independent counsel.” *Id.*

The holding in *Morrison* also has no bearing here. CFPB ALJs hardly have limited duties. They can issue subpoenas and protective orders, take depositions, receive evidence, rule upon motions, issue sanctions, and issue recommended decisions. 12 C.F.R. § 1081.104(a)-(b). In essence, they serve as both judge and jury in an administrative trial, but unlike judges they are not bound by administrative precedent. *S.E.C. v. Chenery Corp.*, 332 U.S. 194 (1947). Indeed, this Court has affirmed ALJs’ ability to make prospective policy through adjudications. *Id.* Further, in contrast to the independent counsel in *Morrison*, CFPB ALJs are not limited to internal investigations on other executive officials, and (as in Sutherland’s case) they adjudicate hearings involving the public. 487 U.S. 654; 505 F.4th 1.

And critically, unlike the Attorney General in *Morrison*, the Director of the CFPB has no for-cause removal authority over an ALJ.<sup>3</sup> 5 U.S.C. § 7521. This destroys the “most important” means of supervision over the ALJ. 487 U.S. at 696. Although the Director can set aside the ALJ’s recommended orders, 12 U.S.C. § 5563(b)(3), this would be an overly blunt tool to ensure ALJ compliance with Presidential policy. ALJs likely make dozens of procedural decisions leading up to each recommended order, but the Director cannot go back and admit different evidence, rule differently upon motions, or issue different subpoenas. Indeed, this Court has recently reemphasized the unique importance of the ability to remove. *Free Ent. Fund*, 561 U.S. at 504 (“Broad power over... functions is not equivalent to the power to remove.”). Removal authority, even with one layer of for-cause removal limitation, can uniquely establish control via the threat of termination. *Id.* at 502.

#### **B. This Court Should Not Craft a New Exception**

This Court does not allow a new exception to the President’s general removal power when the proposed exception has “no basis in history and no place in our constitutional structure.” *Seila*, 140 S. Ct. at 2201. This statutory scheme has a basis in neither, so this Court should reject an attempt to craft a new exception.

Two layers of removal restrictions for executive officials is a recent innovation and therefore has no basis in history. “Perhaps the most telling indication of a severe constitutional problem with an executive entity is a lack of historical precedent to support it.” *Id.* (quoting *Free Ent. Fund*, 561 U.S. at 505) (cleaned up). In *Free Enterprise Fund*, this Court made clear that there is no precedential support for two layers of for-cause removal limitations. 561 U.S. at 486. Further,

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<sup>3</sup> This Court determined in *Seila* that the CFPB Director must be removable at-will by the President. 140 S. Ct. 2183.

the recency of ALJ's dual-layer removal restrictions impedes an argument that the practice is historically rooted. The position of ALJ was created with the Administrative Procedure Act in 1946, but at that point the heads of each agency could directly remove an ALJ for cause. *Ramspeck v. Fed. Trial Exam'rs Conf.*, 345 U.S. 128, 132 (1953). That only changed in 1978 when Congress granted the MSPB the power to determine if there was cause to remove an ALJ.<sup>4</sup> Pub. L. No. 95-454 § 7521 (1978).

Next, dual for-cause removal limitations for CFPB ALJs have no place in our constitutional structure. Because the President (along with their Vice President) is the only person elected by the entire nation, the Framers intended that “a single President [be] responsible for the actions of the Executive Branch.” *Clinton v. Jones*, 520 U.S. 681, 712–713 (1997) (Breyer, J., concurring in judgment). Removal limitations therefore interfere with this scheme when they *functionally* inhibit the President from executing the laws. *Morrison*, 487 U.S. at 685. The constitutionality of for-cause restrictions no longer “turn[s] on whether or not that official is classified as ‘purely executive.’” *Id.* at 657; *Seila*, 140 S. Ct. at 2199 (noting that the Court has turned from a categorical approach towards a functional analysis). It is therefore not sufficient to ask whether an ALJ performs adjudicative functions, but instead whether restrictions on removing an ALJ interfere with the President’s ability to execute the laws.

In *Free Enterprise Fund*, this Court struck down another dual-layer for-cause removal limitation scheme on functional grounds. 561 U.S. at 484. There, the Public Company Accounting Oversight Board (“PCAOB”) was removable only for-cause by the Securities and Exchange Commission, which was in turn removable only for-cause by the President. *Id.* The PCAOB

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<sup>4</sup> This Court has also rejected the notion that there was historical precedent to support a different statutory scheme created in 1978, “nearly 200 years after the Constitution was ratified”. *Seila*, 140 S. Ct. at 2201.

performs adjudications, issues rules, and initiates investigations of accounting firms. *Id.* at 485. While the Court acknowledged it had upheld one layer of for-cause removal limitations in the past, “the added layer of tenure protection makes a difference,” because the Securities and Exchange Commission was “not responsible for [PCAOB’s] actions.” *Id.* at 495-96. Neither the President nor any officer directly responsible to him had full control over the PCAOB. *Id.* at 496. These restrictions impeded the President’s ability to execute the laws because the PCAOB “exercises significant authority pursuant to the laws of the United States.” *Id.* at 486 (citing *Buckley v. Valeo*, 424 U.S. 1, 125–126 (1976)) (cleaned up).

The instant case presents an analogous situation. If the President or the Director wants to remove a CFPB ALJ, they not only need to find cause, but convince the MSPB that such cause exists. The MSPB cannot be held responsible for failure to do so, unless it commits malfeasance itself. The President would likely be reduced to persuading the ALJ or the MSPB to see matters from the President’s perspective. This is why the *Free Enterprise Fund* court worried that two layers of for-cause removal limitations could reduce the President to “cajoler-in-chief.” 561 U.S. at 502.

While this Court should strike down dual for-cause removal limitations for CFPB ALJs, its holding does not necessarily need to extend to all ALJs. CFPB ALJs may have substantially more policymaking authority than ALJs in some other agencies, so two layers of removal limitations for CFPB ALJs may present a correspondingly larger obstacle to the President’s ability to execute the laws. To take one example, an ALJ in the Social Security Administration might make findings limited in policy scope and dollar amounts, while CFPB ALJs rule on matters of public importance and monetary significance. *Compare Jones v. Kijakazi*, No. CV 20-1074-SRF, 2022 WL 1016610 (D. Del. Apr. 5, 2022) (reviewing Social Security Administration ALJ ruling that single individual

not entitled to benefits); *with* PHH Corp., 2014 C.F.P.B. 2, 91 (Nov. 25, 2014), [https://files.consumerfinance.gov/f/documents/201411\\_cfpb\\_recommend-decision-final\\_205.pdf](https://files.consumerfinance.gov/f/documents/201411_cfpb_recommend-decision-final_205.pdf) (CFPB ALJ assessing \$6 million penalty for mortgage company that issued “thousands” of “captive loans,”); *see also* Seila at 2202 (“unlike the CFPB, the [Social Security Agency] lacks the authority to bring enforcement actions against private parties. Its role is largely limited to adjudicating claims for Social Security benefits.”).

### CONCLUSION

For these reasons, Sutherland respectfully requests that this Court reverse the decision of the Twelfth Circuit on both issues presented. This Court should hold that deception actions for civil penalties under the CFPA require a jury trial, and that two layers of for-cause removal limitations for CFPB ALJs violate the separation of powers.



**Applicant Details**

First Name	Harold											
Last Name	Ekeh											
Citizenship Status	U. S. Citizen											
Email Address	<a href="mailto:hekeh@jd24.law.harvard.edu">hekeh@jd24.law.harvard.edu</a>											
Address	<table><tbody><tr><td>Address</td></tr><tr><td>Street</td></tr><tr><td>19 East 83rd Street, Apt #1B</td></tr><tr><td>City</td></tr><tr><td>New York</td></tr><tr><td>State/Territory</td></tr><tr><td>New York</td></tr><tr><td>Zip</td></tr><tr><td>10028</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></tbody></table>	Address	Street	19 East 83rd Street, Apt #1B	City	New York	State/Territory	New York	Zip	10028	Country	United States
Address												
Street												
19 East 83rd Street, Apt #1B												
City												
New York												
State/Territory												
New York												
Zip												
10028												
Country												
United States												
Contact Phone Number	7188107683											

**Applicant Education**

BA/BS From	Yale University
Date of BA/BS	May 2019
JD/LLB From	Harvard Law School
	<a href="https://hls.harvard.edu/dept/ocs/">https://hls.harvard.edu/dept/ocs/</a>
Date of JD/LLB	May 20, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Harvard Civil Rights-Civil Liberties Law Review
Moot Court Experience	No

**Bar Admission****Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

## **Specialized Work Experience**

## **Recommenders**

Lee, Theresa  
thlee@law.harvard.edu  
(617) 496-0370

Gersen, Jacob  
jgersen@law.harvard.edu  
617-495-1414

Waldman, Michael  
barta@brennan.law.nyu.edu  
646.292.8310

Bowie, Nikolas  
nbowie@law.harvard.edu  
617-496-0888

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Harold Ekeh**

55 Langdon St., Cambridge, MA 02138 • hekeh@jd24.law.harvard.edu • 718.810.7683

June 12, 2023

The Honorable Jamar K. Walker  
United States District Court, Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers for the 2024–2025 term. I am a rising third-year student at Harvard Law School where I serve as Executive Managing Editor for the Harvard Civil Rights-Civil Liberties Law Review. As a queer, first-generation American, I am inspired by your work and leadership on the bench and beyond. I am eager to build on my experiences across procedural and substantive law to be a strong addition to your chambers.

Enclosed, please find my resume, law school transcript, and writing sample. You will receive letters of recommendation from the following references:

Nikolas Bowie  
Louis D. Brandeis Professor of Law  
Harvard Law School  
nbowie@law.harvard.edu  
617.496.0888

Jacob Gersen  
Sidley Austin Professor of Law  
Harvard Law School  
jgersen@law.harvard.edu  
617.998.1742

Theresa J. Lee  
Litigation Director, Election Law Clinic  
Harvard Law School  
thlee@law.harvard.edu  
617.496.0370

Michael Waldman  
President, Brennan Center for Justice  
NYU School of Law  
mwaldman@brennan.law.nyu.edu  
646.292.8310

I would welcome an opportunity to further discuss and would be honored to contribute my skills to the work of your chambers.

Sincerely,

*Harold Ekeh*

Harold Ebubechukwu Ekeh

## Harold Ekeh

55 Langdon St., Cambridge, MA 02138 • hekeh@jd24.law.harvard.edu • 718.810.7683

### EDUCATION

#### Harvard Law School | J.D. Candidate

Expected Graduation: May 2024

Honors: Dean's Scholar Prize: Local Government Law | Honors: Evidence, Torts, Framing & Supreme Court Jurisprudence. NAACP Legal Defense Fund: 2021 Justice Earl Warren Scholar, The Appellate Project, Paul & Daisy Soros Fellowship: 2021 Fellow. [YaleNews](#) | [Law.com](#) | [PDSoros](#).

Activities: Teaching Fellow: Tort Law, Prof. Jacob Gersen | Great Supreme Court Cases, Judge Joseph Greenaway (3d Cir.)  
Research Assistant: *Working Group on Supreme Court Appointments*, American Academy of Arts & Sciences  
Executive Managing Editor: Harvard Civil Rights-Civil Liberties Law Review  
Co-Chair: *Academic Affairs Committee*, Harvard Black Law Students Association (HBLSA)  
Student Attorney: Election Law Clinic — co-author, *Moore v. Harper* amicus brief; VAEHA investigation

#### Yale University

New Haven, CT

Major: Bachelor of Arts in Political Science and Government

August 2015–May 2019

Thesis: *Campaign Finance Reform & Direct Democracy: A Comparative Assessment of State-Level Public Financing*

Selected Honors: Intel Science Talent Search: Medicine & Health Sciences Semifinalist, Prusoff Fund, RMHC Future Achievers.

### PROFESSIONAL EXPERIENCE

#### Cravath, Swaine & Moore LLP

New York, NY

Summer Associate

May 2023–July 2023

- Drafting legal documents and conducting research for complex civil litigation, securities offerings, antitrust, & transportation matters.

#### U.S. Department of Justice, Civil Rights Division: Voting Section

Washington, D.C.

Heyman Fellow, Legal Intern

July 2022–August 2022

- Provided legal research & logistical support for Georgia S.B. 202 suit, drafted justification memo for forthcoming enforcement matter, conducted election monitoring to assess English-Spanish language assistance program integration under Section 203.

#### Skadden, Arps, Slate, Meagher & Flom LLP

Washington, D.C.

1L Scholar, Summer Associate

May 2022–July 2022

- Conducted legal research & drafted memos for government enforcement and white-collar defense, healthcare sciences, consumer financial services, political law, and litigation matters. Completed tax pro-bono project on incorporation of a mental health institute.

#### Sponsors for Educational Opportunity (SEO) Law Fellowship

New York, NY

Law Fellow, White & Case LLP

May 2021–July 2021

- Conducted legal research & drafted memos for antitrust and commercial litigation matters including co-conspirator jurisdiction in price-fixing schemes, pharmaceutical case analysis, and relevant class action motions to dismiss.
- Led summer associate team in drafting 90-page review brief for innocence project case; conducted legal analysis of critiques to *Richardson v. Ramirez*, 418 U.S. 24 (1974) for felony disenfranchisement matter, presented findings to client and partners.

#### Brennan Center for Justice at NYU School of Law

New York, NY

Special Assistant to the President

June 2019–May 2021

- Conducted research and provided editorial support for >15 publications, op-eds, law review articles, analyses, and reports.
- Selected Publications: [The False Narrative of Vote by Mail Fraud](#) | [Beyond Impeachment](#) | [The News' Election Day Responsibility](#)
  - *Trump's call to postpone elections is an outrageous break with American faith in democracy*, [Washington Post](#)
  - [It's Official: The 2020 Election was Secure](#) | [Voting Laws Roundup Report: March 2021](#): finds 361 restrictive bills in 47 states.
- Briefed president for >80 media appearances, interviews, events, documentary tapings, board and principal-level coalition meetings.

#### Every Vote Counts 501(c)(3) [[evcnational.org](#)]

New York, NY

Co-Founder & President

Fall 2017–Present

- Spearheaded development and launch of national nonprofit to expand voter access & empower college and high school students through advocacy, engagement, and civic education; 30.2%+ Yale turnout, scaled 60+ chapters, reach>600k students, \$700K budget.
- Launched [TOTV](#), [240+](#) university signatories, [Faculty](#) for Student Voting Rights, recruited [poll workers](#) in 20+ states, partnered with 50+ campus groups, Yale Dean and V.P. to create [Yale Votes](#). Press: [NYT](#), [WSJ](#), [USA Today](#), [Buzzfeed](#), [RCP](#), [The Hill](#), [NYDN](#).

#### Congressional Black Caucus, Emerging Leaders Program

Washington, D.C.

Legislative Intern, Representative Gregory Meeks' (D-NY) Office

June 2017–August 2017

- Drafted legislative memos on financial services, healthcare, & voting rights; CBO procedure letter against ACA repeal (57 sponsors).

### AFFILIATIONS & INTERESTS

HLS Lambda, First-Generation Law Students, Harvard African Law Students Association, Tenor: Yale Gospel Choir, Mentor: Yale African Scholars | Hiking, Strength training, Hamilton the Musical, Health & wellness podcasts, West African cuisine, Pour-over coffee

Harvard Law School

Date of Issue: June 6, 2023

Not valid unless signed and sealed

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Record of: Harold Ebubechukwu Ekeh

Current Program Status: JD Candidate

Pro Bono Requirement Complete

JD Program				3005	Election Law Clinical Seminar	H	2	
Fall 2021 Term: September 01 - December 03				2208	Greenwood, Ruth			
1000	Civil Procedure 1	P	4		Great Cases of the Supreme Court	CR	1	
	Rubenstein, William				Greenaway, Joseph			
Fall 2021 Total Credits:				18	Fall 2022 Total Credits:		13	
1001	Contracts 1	P	4		Winter 2023 Term: January 01 - January 31			
	Okediji, Ruth							
1006	First Year Legal Research and Writing 1B	P	2	2181	Local Government Law	H*	2	
	Havasy, Christopher				Bowie, Nikolas			
1003	Legislation and Regulation 1	P	4		* Dean's Scholar Prize			
	Tarullo, Daniel				Winter 2023 Total Credits:		2	
1004	Property 1	P	4		Spring 2023 Term: February 01 - May 31			
	Mann, Bruce							
Fall 2021 Total Credits:				18	2050	Criminal Procedure: Investigations	P	4
Winter 2022 Term: January 04 - January 21						Jain, Eisha		
1055	Introduction to Trial Advocacy	CR	3	2079	Evidence	H	3	
	Newman, Thomas				Clary, Richard			
Winter 2022 Total Credits:				3	3011	Framing, Narrative, and Supreme Court Jurisprudence	H	2
Spring 2022 Term: February 01 - May 13						Jenkins, Alan		
1024	Constitutional Law 1	P	4	3127	Interpreting "The Judicial Power"	CR	1	
	Eidelson, Benjamin				Gallopy, Owen			
1002	Criminal Law 1	P	4	2170	Legal Profession Seminar	H	2	
	Yang, Crystal				Wilkins, David			
1006	First Year Legal Research and Writing 1B	P	2		Spring 2023 Total Credits:			12
	Havasy, Christopher				Total 2022-2023 Credits:			27
2391	Progressive Alternatives: Institutional Reconstruction Now	H	2	3218	Fall 2023 Term: August 30 - December 15			
	Unger, Roberto Mangabeira				Debt, Discrimination, and Inequality	~	1	
1005	Torts 1	H	4	2086	Atkinson, Abbye			
	Gersen, Jacob				Federal Courts and the Federal System	~	5	
Spring 2022 Total Credits:				16	Goldsmith, Jack			
Total 2021-2022 Credits:				37	3202	The United States Supreme Court	~	2
Fall 2022 Term: September 01 - December 31					Sunstein, Cass			
					Fall 2023 Total Credits:			8
3176	A Democracy Initiative	H	2		Spring 2024 Term: January 22 - May 10			
	Lessig, Lawrence			2169	Legal Profession	~	2	
2000	Administrative Law	P	4		Boak, Meredith			
	Freeman, Jody			2195	Negotiation Workshop	~	4	
8053	Election Law Clinic	H	4		Heen, Sheila			
	Greenwood, Ruth			8039	Veterans Law and Disability Benefits Clinic	~	3	
					Nagin, Daniel			
								continued on next page

continued on next page

Harvard Law School

Record of: Harold Ebubechukwu Ekeh

Date of Issue: June 6, 2023  
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	Spring 2024 Total Credits:	9
	Total 2023-2024 Credits:	17
	Total JD Program Credits:	81
End of official record		

**HARVARD LAW SCHOOL**  
 Office of the Registrar  
 1585 Massachusetts Avenue  
 Cambridge, Massachusetts 02138  
 (617) 495-4612  
[www.law.harvard.edu](http://www.law.harvard.edu)  
[registrar@law.harvard.edu](mailto:registrar@law.harvard.edu)

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
 ~~~~~

A student is in good academic standing unless otherwise indicated.

#### **Accreditation**

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

#### **Degrees Offered**

J.D. (Juris Doctor)  
 LL.M. (Master of Laws)  
 S.J.D. (Doctor of Juridical Science)

#### **Current Grading System**

**Fall 2008 – Present:** Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

**Dean's Scholar Prize (\*):** Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

#### **Rules for Determining Honors for the JD Program**

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

#### **May 2011 - Present**

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

#### **Prior Grading Systems**

**Prior to 1969:** 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

**1969 to Spring 2009:** A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

#### **Prior Ranking System and Rules for Determining Honors for the JD Program**

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

#### **June 1999 to May 2010**

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

#### **Prior Degrees and Certificates**

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).



June 2, 2023

The Honorable Jamar K. Walker  
 United States District Court for the Eastern District of Virginia  
 Walter E. Hoffman United States Courthouse  
 600 Granby Street  
 Norfolk, VA 23510-1915

**Re: Harold Ekeh's Clerkship Application**

Your Honor,

I write in unequivocal support of Harold Ekeh's application for a clerkship in your chambers. I am the Litigation Director and a Clinical Instructor at the Election Law Clinic at Harvard Law School. I was fortunate to have Harold on my team of clinical students and related seminar this past year. I supervised Harold on two case teams as well as providing one-on-one supervision throughout the course of the semester.

During my years of practice and of teaching at both Harvard and Yale Law Schools, I have worked with dozens of students, and can say that Harold is a standout in his work ethic and the depth of his legal thinking. Throughout his time in the Clinic, Harold was a key member of two case teams I managed, which allowed me to become familiar with his work in a variety of contexts.

Impressed with Harold's writing upon his admission to the Clinic, our clinical staff assigned him as one of the students charged with drafting an amicus brief highlighting the doctrinal pitfalls of the independent state legislature theory in *Moore v. Harper*. As you might imagine, work in the U.S. Supreme Court often captures the attention of law students, so there was substantial interest among our students to be assigned to that particular team. Due to the compressed timeline, as the brief was due less than two months into the semester, as well as the need for unparalleled research and writing skills, we were discriminating in assigning students to that team. Our choice of Harold proved to be just right. The brief called for substantial in-depth research across both state and federal caselaw, in addition to difficult choices about how much to include on each element of the brief in order to meet the word limit. Harold demonstrated excellent research skills, finding the exact examples the brief needed as well as undertaking research on federal jurisdiction, all before ever having taken Federal Courts. He also excelled in writing persuasively and clearly, working with his team members to structure the brief and sharpen the arguments.

While his work in *Moore v. Harper* was at the far end of the life of a litigation, in a case on final appellate review, his other case team was at the other end: developing a new idea and conducting legal and factual research in order to determine its viability. Harold was a key member of a team researching whether the under-utilized Voting Accessibility for the Elderly and Handicapped Act (VAEHA) could provide a pathway to tackle the problem of long lines at polling places. As far as our research could uncover, VAEHA has not been used as a cause of action in any case despite its inclusion of an express private right of action. Harold undertook research into the utility of VAEHA, demonstrating skill in statutory interpretation as well as the



way in which federal laws with requirements for the states are codified in state statute and regulatory regimes. This team called for creative legal thinking as well as painstaking legal and factual research about the ways in which states assign resources and voters to polling locations. In every assignment, Harold demonstrated his ability to work with his team members to identify the most efficient ways to tackle unwieldy questions as well as keen attention to detail.

As part of the seminar that accompanies the Clinic, for their semester project, the students are asked to research, develop, and propose potential litigation or legislation, and detail the legal, strategic, and community-based choices that would be necessary to pursuing such a project. For his final project, Harold developed a case making use of the under-used Section 208 of the Voting Rights Act, which considers voting access for those with disabilities. He demonstrated creative analytical thinking, proposing ways in which the law could be used to ensure the right to vote, particularly for those with so-called invisible disabilities. As with his other work throughout the semester, Harold demonstrated expansive research skills in addition to clear and precise writing, earning an H in the seminar.

Law school demands a method of thinking that is often unfamiliar for students as they begin. From working with Harold as a 2L and observing how he has grown across his law school career, it is apparent to me that while in his initial semester, he was first becoming familiar with how to think like a lawyer, he has now adapted to—and indeed excels at—the demands of legal thinking, research, and writing.

In addition to his legal skills, Harold is wonderful to work with. He is a deep thinker, gregarious, open, and kind. From my own experience as a law clerk many years ago, I can confidently say that Harold's presence would be a welcome and much valued addition to any chambers.

In sum, Harold has all the qualifications that I imagine you might be looking for in a law clerk. If you have any questions about Harold that I might be able to answer, please do not hesitate to contact me at [thlee@law.harvard.edu](mailto:thlee@law.harvard.edu) or (617) 496-0370.

Sincerely,



Theresa J. Lee  
Litigation Director  
Election Law Clinic  
Harvard Law School

June 05, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write this letter offering my strongest support for Harold Ekeh's clerkship application. I have known Harold since his first year of law school when I was his professor for Torts. Most recently, I've worked closely with him as he served as a teaching fellow for this year's 1L Torts class. I have been impressed by his writing and research acumen, initiative and emotionally intelligent leadership, and unbridled dedication to service and the public interest. As a first-generation, New American, eldest of five brothers, he has persevered through—and even thrived under—a variety of challenging environments and circumstances. I am entirely confident he will be a wonderful addition to your chambers.

Harold has a unique background and wealth of experiences that ground his day-to-day work and his longer-term aspirations. He and his parents emigrated from Lagos, Nigeria to Queens, New York when he was eight years old and rebuilt their lives from the ground up. Despite various phases of transition and displacement, Harold and his family focused on educational opportunities and intentional community-building. He was the first in his family to graduate from college and has a long and demonstrated commitment to service and the public interest. He is eager to meet the moment because, as he's told me, "democracy and equality of all" is more than an idyllic intellectual exercise. He believes in the promise of this country, and it inspires his commitment to the administration of justice and service for the greater good.

Harold did his undergraduate work at Yale, studying Political Science. He is a Soros Fellow and has won a variety of awards. At Harvard Law School, he has become a valuable member of the community. I first met Harold in the Spring of 2021 as a student in my Torts class. I was impressed by his positive attitude, thoughtful and energetic in-class contributions, and his written work. He performed exceedingly well on the final exam, and I would soon learn that the high level of skill and dedication I had witnessed all semester were par for the course for Harold.

Over the summer of 2021, he kept in touch and shared his excitement working on disgorgement and damages-related matters as a 1L Scholar at Skadden's D.C. office and he plans to spend the second half of this summer doing some of the work he's been most passionate about as an intern with the Department of Justice's Civil Rights Division: Voting Section. I learned that he had built on his experiences working with the Congressional Black Caucus to launch a nationwide nonprofit dedicated to expanding voter access through advocacy and civic education on over fifty college campuses.

Reflecting what I know of his diligence and character, I asked him to be a teaching fellow for Torts this past semester. Harold was terrific with the students, with his fellow TF, and with me. He is an easy communicator, displays good judgement, and a steady hand with the students, offering support but also boundaries. Harold kept his ears to the ground and showed an almost eerie ability to always think a few steps ahead and perfectly anticipate my needs as a professor, and those of the students under his tutelage. He quickly integrated weekly office hours along with his co-teaching fellow, met with our students 1:1 for coffees and lunches, and hosted a useful review session ahead of the final examination. All of these were of his own initiative, and, throughout, he adapted quickly to inevitable curveballs and new challenges.

Overall, Harold is a pleasure to work with. I have never seen him get rattled. He displays no real ego and takes his work extremely seriously. I am confident he will make an extremely good clerk. If I can be of help in any way, please do not hesitate to ask. In the meantime, I wish you all the very best.

Sincerely,

Jacob E. Gersen  
Sidley Austin Professor of Law

Jacob Gersen - jgersen@law.harvard.edu - 617-495-1414

June 08, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend Harold Ekeh for a clerkship in your chambers. Harold is an inspiring person—a queer, black, first-generation American with an enormous smile and a deep commitment to democracy. He will be an excellent clerk.

I met Harold in the winter of his second year at Harvard Law School, when he enrolled in my January-term class on state and local government law. The course was an intense, three-week class that surveyed the legal structure of states and local governments along with how those structures affect discrete policies like education, housing, public safety, and public finances. As a class, we then developed a model state constitution and city charter. The two graded assignments were two essays: an 800-word essay calling for Massachusetts to amend its constitution, and a 3000-word essay calling for Cambridge to amend its charter. The essays were graded on a rubric that assessed the quality of the substantive argument as well as the quality of the writing.

Harold's essays were both excellent and a pleasure to read. In his first essay, he wrote a provocative op-ed calling upon Massachusetts to choose some members of the legislature by sortition, or lottery. Although Harold recognized that sortition-based governing bodies are unconventional in the United States, he did an enormous amount of research in a short period to support his position that lottery-based governments would address many of the problems with election-based representatives and encourage citizens to think of themselves as part of a broader community rather than a narrow voting bloc. For example, he drew on the work of one of his college mentors, the democratic theorist Hélène Landemore, to argue that elections tend to reward well-positioned insiders who conform to social preconceptions about height, race, candor, and wealth. Sortition, by contrast, would make it more likely that a governing body would include perspectives that are systematically excluded in electoral democracy: the "introverted, inarticulate, short, and shy," as well as members of groups at the bottom of social hierarchies.

Harold's second essay was a long-form Atlantic-style article that called upon Cambridge to lower the voting age to 16. Harold drew upon the experience of Greta Thunberg, Jaylen Smith, Maxwell Frost, and other national and international leaders. Where a voting age of 18 presumes that young people are not capable of making important decisions, Harold argued that these leaders demonstrated that decisions made without the perspective of young people can be far more harmful. Frost, for example, grew up among a generation of students who were required to participate in routine drills on how to respond to mass shootings—drills that could not prepare him for his own experience in Parkland, Fla. And Thunberg famously argued that young people are far more concerned about climate change than adults precisely because of their age.

Both essays shared a common theme: restructuring democracy to incorporate the values and perspectives of people who are typically excluded. This theme inspired Harold's reason for coming to law school and has guided his goal after graduating. Harold immigrated to the United States from Nigeria, and the thing that shocked him most after becoming a U.S. citizen was how many Americans are prohibited from voting. In college he founded a student-led voting organization dedicated to expanding voter access in college campuses across the country, and after graduating he spent time researching voter-exclusion laws at the Brennan Center. At HLS, Harold has dedicated most of his time studying and practicing election law. He is passionate about making the political process more democratic, fair, and accessible to all.

Although I cannot personally speak to Harold's ability to apply federal legal doctrine, I anticipate that his exceptional experience with federal voting law will translate into a successful clerkship. He certainly had no trouble grasping and applying state and local government law. In class and afterward, he had a booming laugh that filled the room with joy. I envy anyone who will get to work with him.

Sincerely,  
Nikolas Bowie  
Louis D. Brandeis Professor of Law  
Harvard Law School

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**Harold Ekeh**

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**Writing Sample #1**

The attached writing sample is an excerpt from a brief submitted before the United States Supreme Court on behalf of *amici curiae* Carolyn Shapiro, Nicholas O. Stephanopoulos, and Daniel P. Tokaji. I worked on this as part of a three-student team in the Election Law Clinic.

Each student wrote and edited one of the three main arguments in the brief, which are outlined in the “Summary of the Argument” section. We were supervised by Theresa Lee, Litigation Director of the Election Law Clinic.

I co-wrote the “Summary of the Argument” and “Argument” section with Theresa and the two students. I solely wrote Section II (ISLT will create numerous practical problems for election administration), starting on page 6 of the attached. I redact all sections I did not take part in writing. My writing was edited by Theresa and reviewed by *amici curiae* upon the final draft. I have received permission from the clinic to use this brief as a writing sample.

**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici curiae* are law professors who research and write about election law and/or about the federal courts.

*Amicus curiae* Carolyn Shapiro is Professor of Law and Co-Director of the Institute on the Supreme Court of the United States at Chicago-Kent College of Law. Her related work includes *The Independent State Legislature Theory, Federal Courts, and State Law*, 90 U. Chi. L. Rev. (forthcoming 2023), and *Democracy, Federalism, and the Guarantee Clause*, 62 Ariz. L. Rev. 183 (2020).

*Amicus curiae* Nicholas O. Stephanopoulos is Kirkland & Ellis Professor of Law and Director of Strategy of the Election Law Clinic at Harvard Law School. His related work includes *The Sweep of the Electoral Power*, 36 Const. Comment. 1 (2021), and *Arizona and Anti-Reform*, 2015 U. Chi. Legal F. 477.

*Amicus curiae* Daniel P. Tokaji is the Fred W. & Vi Miller Dean and Professor of Law at the University of Wisconsin Law School.<sup>2</sup> His related work includes *Election Law: Cases and Materials* (7th ed. 2022) (with Richard L. Hasen, Daniel H. Lowenstein, and Nicholas O. Stephanopoulos), and *Gerrymandering and Association*, 59 Wm. & Mary L. Rev. 2159 (2018).

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<sup>1</sup> No parties or their counsel had any role in authoring or made any monetary contribution to fund the preparation or submission of this brief. All parties entered blanket consent for the filing of *amicus* briefs.

<sup>2</sup> Institutional affiliation provided for identification purposes.

## SUMMARY OF THE ARGUMENT

Petitioners ask this Court to unmoor state legislatures from the very state constitutions that create them, insisting on a reading of the Elections Clause, referred to herein as the independent state legislature theory (“ISLT”). As Respondents and other *amici* show, original public meaning and practice weigh against ISLT. Because of this longstanding tradition, state law generally does not distinguish between state and federal elections. Petitioners and many *amici* focus exclusively on congressional redistricting and so fail to grapple with the implications of ISLT for the myriad other laws governing elections in this country. For these reasons, *Amici* explore the multitude of doctrinal and practical problems adoption of ISLT would likely cause in all aspects of American elections.

I. Petitioners’ gloss on ISLT provides courts with no manageable standards. Petitioners propose a version of ISLT that limits the application of what they describe as “vague” constitutional provisions. But they offer no clear guidance for how to tell when a constitutional provision is so vague, such that state courts are prevented from ordinary judicial review. The best attempts of their *amici* to identify a clear statement rule are similarly opaque and would disrupt centuries of state constitutional law.

ISLT is not just a matter of the allocation of power within a state, instead it effects a massive shift from state to federal courts. It undermines the ordinary processes of judicial review and reallocates questions of state law into the federal courts, implicating

concerns key to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), particularly forum-shopping and the inconsistent administration of state law.

II. ISLT threatens to decimate the conduct of elections across the country by effectively creating two sets of rules for administering elections and by destroying legislative delegation. ISLT could even render inoperable the very functioning of election administration systems nationwide.

III. Finally, ISLT also threatens to federalize election disputes, overburdening the federal judiciary and potentially upending approaches to state statutory interpretation without a clear replacement. And ISLT creates questions about a state legislature's ability to bind its own hands in regulating federal elections. These ambiguities risk involving the federal courts in fundamental questions of state governmental design—questions that the federal Constitution leaves to the states.

## ARGUMENT

As Respondents and other *amici* show, original public meaning and practice both weigh against ISLT. So do two-and-a-half centuries of subsequent practice. As a result of this longstanding tradition, state law rarely distinguishes between state and federal elections. Indeed, “[l]ong settled and established practice’ may have ‘great weight in a proper interpretation of constitutional provisions.’” *Chiafalo v. Washington*, 140 S. Ct. 2316, 2326 (2020) (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929)). As the primary drafter of our Constitution recognized, “a regular

course of practice' can 'liquidate & settle the meaning of' disputed or indeterminate 'terms & phrases.'" *Id.* (quoting *Letter of James Madison to Spencer Roane* (Sept. 2, 1819), in 8 *Writings of James Madison* 450 (Gaillard Hunt ed., 1908)); see also William Baude, *Constitutional Liquidation*, 71 *Stan. L. Rev.* 1, 10-11 (2019). Here, *Amici* explore the multitude of doctrinal and administrative problems that ignoring these centuries of practice and adopting ISLT threaten to cause.

Adopting ISLT has the potential to disrupt both settled structures for review of election law questions and the administration of elections, throwing doctrine and the conduct of elections into disarray. While Petitioners and many of their *amici* focus exclusively on congressional redistricting, ISLT threatens to sow chaos for election-related statutes of all kinds. And their characterization of what is at issue disguises the underlying shift that ISLT effects: one from state courts to federal courts. By abrogating the power of state courts to review state law regulation of federal elections, ISLT will likely force more cases into federal courts. A system where federal courts interpret and create a separate body of law for federal elections will have states running two sets of elections despite having a single statute. ISLT could also hobble the decentralized way that states conduct elections, creating confusion for voters and imposing crippling administrative burdens on legislatures. And it would create uncertainty about which law applies by throwing past executive or judicial action into question. ISLT spells confusion and disarray for



federal courts, state governments, and voters across the country.

This is true no matter what version of ISLT is considered. At the most basic level, proponents of ISLT argue that the Elections Clause’s reference to the “Legislature” restricts the power to regulate federal elections *only* to the state’s legislative body, “rather than the state as an entity.” Michael T. Morley, *The Independent State Legislature Doctrine*, 90 Fordham L. Rev. 501, 503 (2021) (Morley, *ISLD*). In this view, the other branches of state government are deprived of their ordinary power to check the state legislature’s regulation of federal elections.

All forms of ISLT raise varying questions about constitutional structure and historical support. See *Hearing on “The Independent State Legislature Theory and its Potential to Disrupt our Democracy” Before the H. Comm. on Administration*, 117th Cong. 1 (2022) (testimony of Richard H. Pildes, Sudler Family Professor of Constitutional Law). While Petitioners advance a maximalist version that objects to the North Carolina Supreme Court’s exercise of legislatively authorized power, any version of ISLT will likely produce doctrinal and administrative problems, disrupting both the way states run elections and how courts adjudicate disputes.

**I. ISLT undermines the normal operation of judicial review.**

[REDACTED]

**II. ISLT will create numerous practical problems for election administration.**

**A. ISLT may disrupt the legislative delegation of administrative decisions and the conduct of elections.**

1. Any version of ISLT threatens to disrupt the way states across the country conduct elections, and the version that Petitioners advance appears to prohibit any assignment of elections-related authority to nonlegislative bodies.

North Carolina's legislature expressly assigned review to North Carolina's courts. *See* N.C. Gen. Stat. §§ 1-267.1(a), 120-2.3, 120-2.4(a1). Petitioners attempt to mask the extreme result of their argument as a mere objection to the way in which judicial review functioned, *see* Pet. Br. 1, 48, but any fair reading of the related statutes and procedural history of the case belies this contention. The statute places review in the hands of the North Carolina courts, expressly affording them jurisdiction over a specific area of law, i.e., districting. There is no clear line between assignment of judicial review and delegation of authority to nonlegislative actors to regulate elections. Thus, if this Court embraces Petitioners' version of ISLT, it opens the door to myriad challenges to states' structures of election governance. *See* Shapiro, *supra* (manuscript at 55).

2. This view of ISLT thus has the potential to create chaos in election administration. Election administration is a "decentralized" process, "primarily administered by thousands of state and local systems

rather than a single, unified national system.” Karen L. Shanton, Cong. Rsch. Serv., R45549, *The State and Local Role in Election Administration* 1 (2019). Nonlegislative actors make crucial decisions for the regulation and administration of elections. Florida’s state legislature has delegated creation and maintenance of voter registration to the Secretary of State. Fla. Stat. § 98.035(1). In Georgia, the legislature has delegated the ability to select and fix polling place precincts to county officials. Ga. Code Ann. § 21-2-265(a). North Carolina’s General Assembly has created a State Board of Elections with the power of general supervision and the authority to regulate elections. N.C. Gen. Stat. § 163-22(a). In Ohio, the legislature has delegated to the Secretary of State the power to appoint the Board of Electors, which in turn exercises the delegated power to carry out a variety of duties related to the conduct of elections. Ohio Rev. Code Ann. §§ 3501.05, 3501.011. These are but a small sampling of the myriad delegations of authority embedded in the operation of American elections.

ISLT would, at a minimum, invite new and widespread challenges to longstanding election systems. Ultimately, it could undermine the delegation of authority those systems depend on. State legislatures, suddenly independent and unable to delegate, could be forced to make hundreds of miniscule decisions related to election administration. Legislators would be forced to choose between continuing their normal legislative business or spending months administering elections. This situation is unworkable and is unnecessary as a matter of constitutional interpretation.

**B. ISLT will likely lead to many states having two different sets of rules for state and federal elections, confusing voters and burdening election administrators.**

1. Most state election laws apply to state and federal elections without distinction. *See* Shapiro, *supra* at 6-7. And despite Petitioners' focus on congressional districting, their theory reaches all manner of election laws. Under ISLT, if a state court finds an election statute unconstitutional under the state constitution, the statute would remain in force for federal elections, leading to two different sets of election rules. This would cause administrative burdens and chaos by forcing election administrators to run concurrent state and federal elections under different rules.

For instance, the Delaware Supreme Court recently determined that new statutory provisions authorizing vote-by-mail and same-day voter registration violated the state constitution. *Albence v. Higgin*, No. 342, 2022 WL 5333790, at \*1 (Del. Oct. 7, 2022). ISLT would require election administrators to keep vote-by-mail and same-day voter registration systems in place for federal, but not state, elections. Such an outcome would lead to administrative chaos as the Board of Elections would have to permit same-day-registration and send mail ballots to voters for federal races alone. Administering separate registration deadlines and vote-by-mail schemes would burden election administrators and sow confusion among voters.

Think also of Arkansas's Act 595, a law designed to implement a photo voter ID mandate, which was

struck down as violating the state constitution by imposing an additional qualification on voting that would make it harder for Arkansas voters to exercise the franchise. *Martin v. Kohls*, 44 S.W.3d 844, 852-53 (Ark. 2014). Arkansas election officials are prohibited from enforcing the voter ID mandate for state elections. But ISLT would nevertheless require the state to keep Act 595's requirements in force for federal elections. This dual system would require additional staff training and costly duplicative administrative investment, while creating confusion for voters and election officials alike.<sup>3</sup>

As courts routinely consider the constitutionality and meaning of election laws, it is not difficult to foresee other instances where the conduct of state and federal elections under different rules would lead to an administrative morass, difficulties for election workers, and confused and frustrated voters. For instance, in most states, the hours that the polls are open are set by statute, but a problem with a particular polling place opening late can lead to a court order extending the hours of that polling location.<sup>4</sup> If a state court

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<sup>3</sup> Occasionally, states choose to have a dual system, with different requirements for state and federal elections. See Ariz. Rev. Stat. § 16-121.01. But in those situations, the decision is made by the legislature, not by the interaction of judicial review with the esoteric ISLT. Moreover, the legislature can provide time (and funding) for election administrators to prepare. Dual systems created as a byproduct of state judicial review would not have those features.

<sup>4</sup> Others have suggested that state courts, rather than having their review constrained, simply lack the power to draw remedial maps. See William Baude & Michael W. McConnell, *SCOTUS*

issued such an order on state constitutional grounds, ISLT appears to require that voters casting ballots after the statutory closing time would only be allowed to vote for state and local offices. This would be virtually impossible for poll workers to administer, as ballots contain all of the contested offices in an election, and doubtlessly lead to voter confusion and upset.

2. Such a two-tiered election system leads to even more disarray when considered against the federal constitutional requirement that electors for the House and Senate have the same qualifications as those for state houses. U.S. Const., art. I, § 2, cl. 1; U.S. Const. amend. XVII, § 1. Under these clauses, voters for state legislature are also eligible to vote for members of Congress. See *The Federalist* No. 57, at 349 (James Madison) (Clinton Rossiter ed., 2003) (“The electors . . . are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State.”).

Under ISLT, if a state court finds an election statute governing voter qualifications unconstitutional under the state constitution, at first blush, the provision would appear to still be in force for all federal

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*Must Reject the Independent-State-Legislature Doctrine*, *The Atlantic* (Oct. 11, 2022). While acknowledging state courts power to interpret and apply their constitutions and to issue prohibitory injunctions, this position again misses the broader impacts of ISLT beyond districting and is inconsistent with the remedial power of courts. Extensions of polling hours, just like the entry of remedial maps in districting cases, are forms of relief “fashioned in the light of well-known principles of equity.” *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (quoting *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)).

elections. But courts would then have to determine whether the federal Constitution also demands that voters eligible to vote in the state legislative election be able to vote in congressional elections as well.

For instance, in Maryland, the state supreme court struck down a statutory scheme that created a list of inactive voters and allowed for their removal from the voter registration rolls as creating an additional qualification to vote in violation of the Maryland Constitution. *Md. Green Party v. Md. Bd. of Elections*, 832 A.2d 214, 229 (Md. 2003). Voters could not be made inactive for state elections, but with ISLT, at first glance, would be for federal elections. But the federal Qualifications Clauses add an extra wrinkle to this two-tiered system. It is unclear how this list maintenance system would operate for U.S. House and Senate elections. For those elections, would the eligible voters be the same as those for state elections, where infrequent voters remain registered, or would it match presidential elections, where, under ISLT, such voters would be removed? See U.S. Const., art. II, § 1, cl. 3. Indeed, courts and litigants would be forced to assess whether state court decisions on contested election provisions affect voter qualifications as envisioned in Article I and the 17th Amendment to begin with, before attempting to sort whether congressional elector qualifications must align with those for the state legislature.

**C. ISLT will likely create confusion about which laws apply, further contributing to chaos.**

1. ISLT may also create confusion about which laws apply by throwing into question the scope of past decisions of state courts. Where a state court has previously enjoined an election law, ISLT creates a question as to which rules govern federal elections. *See* Shapiro, *supra* (manuscript at 52); Maureen E. Brady, *Zombie State Constitutional Provisions*, 2021 Wisc. L. Rev. 1063, 1081-82.

Take Missouri, for example. In 2006, the Missouri Supreme Court struck down a voter ID law, SB 1014, on the ground that it “impose[d] a severe burden” on the “fundamental right to vote” protected by the state constitution. *Weinschenk v. State*, 203 S.W.3d 201, 213, 217 (Mo. 2006) (en banc) (per curiam). In 2016, the Missouri legislature enacted a new voter ID law. *See* Mo. Rev. Stat. § 115.427 (2016). The Supreme Court of Missouri permanently blocked a central portion of the 2016 law in October 2020 because it required a “misleading” and “contradictory” sworn statement from people lacking a photo ID. *Priorities USA v. State*, 591 S.W.3d 448, 452 (Mo. 2020) (en banc). And in September 2022, Missouri passed HB 1878, a new law requiring voters to use a government-issued photo ID to vote. *See* Mo. Rev. Stat § 115.427 (2022). Under ISLT, both the enjoined 2006 law and the permanently blocked affidavit requirement of the 2016 law would arguably still be in effect for federal elections, creating confusion about which of these



three versions of § 115.427 governs voter ID and affidavit requirements.

Missouri's SB 1014 is already more than fifteen years old. The same retroactive application ISLT appears to demand would arguably apply to much older legislative enactments, state court rulings, and gubernatorial vetoes. Piecing together the alternate history ISLT demands would prove difficult for state officials, election administrators, voters, litigants, and the federal courts, underscoring the importance of long-standing practice to constitutional meaning. *See Chiafalo*, 140 S. Ct. at 2326.

In cases where state supreme courts have used the constitutional avoidance canon in interpreting election laws to avoid striking them down under the state constitution, the retroactive application ISLT likely demands may become even more confusing. In Alaska, for example, the state supreme court employed a saving construction to keep a ballot-counting statute in line with the state constitution. Applying a long-standing Alaskan interpretive principle, the court read the law to not invalidate ballots where voters made small errors or variations when voting for write-in candidates. *Miller v. Treadwell*, 245 P.3d 867, 868-69 (Alaska 2010). Under ISLT, the most literal reading of the statute might well take precedence over any saving constructions applied by the Alaska state court, leading to the invalidation of votes for minor errors. The retroactive application of ISLT threatens to create confusion for voters and state officials alike about what law applies after previously enjoined or interpreted laws are resuscitated. Indeed, it calls into question

longstanding state law precedent, like that discussed in *Miller*. *Id.* at 869 & n.14 (relying on case law establishing that Alaska courts are “reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own, and ‘[w]here any reasonable construction of the statute can be found which will avoid such a result, [we] should and will favor it’”).

2. Taken to its logical conclusion, ISLT could also create confusion about what law applies in the context of previously vetoed laws.<sup>5</sup> In New Jersey, for example, Governor Christie vetoed a 2013 law expanding early voting. New Jersey has since passed different

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<sup>5</sup> Though this Court has upheld the role of governors in the enactment of election related legislation, see *Smiley v. Holm*, 285 U.S. 355, 368 (1932), it is unclear that this holding would be undisturbed if the Court now adopts ISLT, see Michael T. Morley, *The Independent State Legislature Doctrine, Federal Elections, and State Constitutions*, 55 Ga. L. Rev. 1, 90 (2020) (admitting that ISLT could “require overturning . . . Smiley”). Indeed, at both the federal level and in every state, our government is one of tripartite and coequal branches. See, e.g., *United States v. Nixon*, 418 U.S. 683, 707 (1974) (“In designing the structure of our Government and dividing and allocating the sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.”); *Bush v. Schiavo*, 885 So. 2d 321, 330 (Fla. 2004) (“Under the express separation of powers provision in our state constitution, ‘the judiciary is a coequal branch of the Florida government vested with the sole authority to exercise the judicial power.’” (quoting *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 268 (1991))). In fact, the Framers agreed that separation of powers was essential for a republican form of government, which the Constitution expressly guarantees at the state level. U.S. Const., art. IV, § 4; William M. Wiecek, *The Guarantee Clause of the U.S. Constitution* 68 (1972).

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regulations of early voting, as recently as 2022. If Governor Christie's veto does not stand, then does the 2013 law apply to federal elections? Or do both the 2013 and 2022 laws apply to those elections?

**III. ISLT could lead to federal courts disrupting ordinary state statutory interpretation doctrines and practices.**

[REDACTED]

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Adopting ISLT creates chaos, upending long-standing practices of election administration and constitutional design. It may render inoperable the very functioning of our election systems and threatens to disrupt settled expectations of the relationship between federal and state sovereignty.

**CONCLUSION**

This Court should reject Petitioners' attempt to upend more than 200 years of practice and governmental design.

October 26, 2022

Respectfully submitted,

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**Writing Sample #2**

As a summer associate at Skadden, Arps, Slate, Meagher & Flom LLP, I prepared the attached memorandum for a partner in the litigation department. The memorandum examined the disposition of *Liu v. SEC*, 140 S.Ct. 1936 (2020), following its remand to the U.S. District Court for the Central District of California.

The memorandum also details the amount the District Court ordered to be disgorged, how the court calculated the disgorgement award, and whether the court addressed the practice of depositing a defendant's gains with the U.S. Treasury. I received one round of stylistic edits from an associate.

To preserve client confidentiality, some portions have been redacted. I have received permission from Skadden to use this memorandum as a writing sample.

PRIVILEGED AND CONFIDENTIAL  
SUBJECT TO THE ATTORNEY-CLIENT  
AND ATTORNEY WORK PRODUCT PRIVILEGES

MEMORANDUM

June 1, 2022

TO: [REDACTED]

FROM: Harold Ekeh

**RE: Disgorgement in *Liu* Remand Proceedings**

The purpose of this memorandum is to summarize the disposition of *Liu v. SEC*, 140 S.Ct. 1936 (2020), following its remand to the U.S. District Court for the Central District of California. The memorandum also details the amount the District Court ordered to be disgorged, how the court calculated the disgorgement award, and whether the court addressed the practice of depositing a defendant's gains with the U.S. Treasury.

**I. Disposition Upon Remand and Disgorgement Award<sup>1</sup>**

The District Court ordered defendants Charles C. Liu and Xin Wang to disgorge, jointly and severally, \$20,871,758.81. This award represented net profits gained as a result of the conduct alleged in the U.S. Securities and Exchange Commission's ("SEC") complaint, together with prejudgment interest thereon in the amount of \$70,713.06.<sup>2</sup> The court ordered the defendants to satisfy their obligations by transmitting payment to the SEC within 30 days of entry of the final judgement. The court calculated the disgorgement award by subtracting the following amounts from the \$26,423,168 that Liu and Wang raised from investors:

<sup>1</sup> Order Granting SEC's Motion for Disgorgement Against Defendants Charles C. Liu and Xin Wang [Dkt. 319], *SEC v. Liu*, No. 8:16-cv-00974, June 7, 2021 (C.D. Cal. 2021).

<sup>2</sup> The court held Liu further liable for a civil penalty in the amount of \$6,714,580 and Wang further liable for a civil penalty in the amount of \$1,538,000, pursuant to Section 20(d)(2)(C) of the Securities Act.

Defendants were also permanently restrained and enjoined from (1) violating Section 17(a) of the Securities Act in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce and (2) directly or indirectly participating in the offer or sale of any security which constitutes an investment in a "commercial enterprise" under the EB-5 visa program administered by the USCIS.

- \$2,210,701 in administrative expenses;
- \$3,105,809 in legitimate business expenses; and
- \$234,899.19 remaining in defendants' corporate accounts plus prejudgment interest.

## II. Whether the District Court Directed Proceeds to the Treasury

The final judgement does not address whether proceeds were to be deposited with the Treasury. The judgement does specify, however, that the SEC “shall hold the funds together with any interest and income earned thereon (the ‘Fund’) pending further order of the Court.”<sup>3</sup> Additionally, the order notes that the SEC may propose a plan to distribute the Fund subject to the court’s approval. Any such plan may provide that the Fund shall be distributed pursuant to the Fair Funds provision of Section 308(a) of the Sarbanes-Oxley Act of 2002. This provision returns wrongful profits, penalties, and fines to defrauded investors.

## III. Calculation of the disgorgement award<sup>4</sup>

### A. Legitimate Expenses

The Supreme Court provided some guidance on what constituted legitimate expenses in the *Liu* case: “some expenses from [Liu and Wang’s] scheme went toward lease payments and cancer-treatment equipment,” and “[s]uch items arguably have value independent of fueling a fraudulent scheme.” *Liu*, 140 S.Ct. at 1950. However, the Supreme Court explicitly left open the question of “whether including those expenses in a profit-based remedy is consistent with the equitable principles underlying § 78u(d)(5).” *Id.*

On remand, the government and defendants both relied heavily on numbers from bookkeeping performed by Marcum LLP, the accountant to the defendants’ business venture.<sup>5</sup> Because of the unreliability of Marcum LLP’s bookkeeping, however, the District Court chose to take a “very liberal approach” to determining what expenses were legitimate.

#### 1. \$45,000 in Administrative Fees from Each Investor

The private offering memorandum (“POM”) solicited \$545,000 from each investor. That investment was divided into two types of payment: (1) a \$500,000 capital contribution and (2) \$45,000 in administrative fees. Defendants collected a total of \$2,210,701 in administrative fees from their investors. Because the amount spent on activities for which the POM stated

<sup>3</sup> Final Judgement as to Defendant Charles C. Liu and Xin a/k/a/ Lisa Wang, *SEC v. Liu*, No. 8:16-cv-00974, June 14, 2021, (C.D. Cal. 2021).

<sup>4</sup> Order Granting SEC’s Motion for Disgorgement Against Defendants Charles C. Liu and Xin Wang [Dkt. 319], *SEC v. Liu*, No. 8:16-cv-00974, June 7, 2021, (C.D. Cal. 2021).

<sup>5</sup> Marcum LLP, the corporate defendant’s accountant, disclaimed the reliability of its numbers for anything resembling an audit. Marcum stated that its services would be performed based on dates and information that Liu provided, which would not be verified or audited. This left the District Court with “a general ledger prepared primarily on the say-so of an adjudicated fraudster, which the preparing accountant expressly stated could not be relied upon to detect errors or fraud.”

administrative fees may be used far exceeded the amount raised for such activities, the SEC suggested that the entirety of administrative fees collected may be deducted as legitimate expenses.

The District Court had serious concerns as to whether money spent on administrative fees was indeed legitimate.<sup>6</sup> However, “out of an abundance of caution,” and “lacking any way to know whether any administrative fee expenses were legitimate,” the court deducted the full \$2,210,701 amount the SEC suggested – the total amount of administrative fees raised – as legitimate expenses.

## 2. Expenses for Development of a Proton Therapy Center

The SEC proposed that the District Court deduct \$3,105,809 in expenses related to construction of the proton therapy center—including construction, rent, equipment, tax payments, insurance costs, travel, consulting fees, and permit and license fees.<sup>7</sup> The court considered the SEC’s proposal “extremely generous” to Liu and Wang for three reasons:

- The calculation relied heavily on Marcum’s bookkeeping;
- Any construction done at the site of the proton therapy center seemed to the Court to be part of the fraud and not a legitimate business expense; and
- It was “difficult to consider money spent to rent land on which defendants never actually planned to operate a proton therapy center as a legitimate expense.”

Out of “an abundance of caution,” and “in light of the Supreme Court’s admonitions,” the District Court proceeded to deduct the proposed amount.

### B. Non-Legitimate Expenses

Defendants argued that Liu’s \$3 million payment to Mevion for a proton therapy machine was also a legitimate expense that should be deducted. The Court concluded that the purpose of the Mevion payment was not to secure a proton therapy machine because Liu already had such a machine with another company, Optivus. The purpose, instead, was “to cut Dr. Thropay out of the project so that Liu could get away with his fraud and make more money.”

Because the POM did not contemplate Liu or Wang receiving any salary at all (it contemplated a management fee – with Pacific Proton Regional Center named as the manager, not Liu or Wang), the Court decided that the \$7.57 million in compensation for Liu and Wang was not a legitimate expense.

### C. Defendants’ Argument That There Were No Net Profits

<sup>6</sup> For example, UDG—the marketing company Liu paid over \$3.8 million—had deep connections to Liu and Wang, with Liu even referring to UDG as “my wife’s company.” *Liu*, 262 F. Supp. 3d at 964.

<sup>7</sup> The SEC’s proposed deduction includes (1) construction-related costs such as architectural design fees, (2) rent payments to Dr. Thropay, (3) proton equipment purchases provided for in the POM and other capital expenditures, and (4) operating expenses such as insurance costs, travel to China and Singapore to recruit patients, consulting fees, permit and license fees, and taxes, among others.



Defendants argued that “there are no net profits to award as equitable disgorgement” because “the project companies incurred significant losses” of about \$16.5 million. The Court replied, “Nonsense.” Citing *SEC v. Shaouljian*, the court observed: “Expenditures a defendant makes for his or her own use from illegally obtained funds are counted against the defendant, precisely because he or she benefited from those expenditures.” *S.E.C. v. Shaouljian*, 2003 WL 26085847, at \*6 (C.D. Cal. May 12, 2003).

Against defendants’ protestation that they did not indirectly receive some of the funds (i.e., some of the funds were paid to companies that had no connection to defendants), the court held that “Liu and Wang must be held accountable, and not given any deduction in the disgorgement award, for the monies that they paid to independent companies to perpetrate their fraud.” The court based its conclusion on the fact that defendants’ construction would “permit the perpetrator of a successful scheme, who was just as successful at dissipating the ill-gotten gains, to avoid a disgorgement order because at the time of the order, [they] had retained none of the proceeds from the scheme.”

**IV. Does the practice of depositing a defendant’s gains with the Treasury satisfy §78u(d)(5)’s command that any remedy be “appropriate or necessary for the benefit of investors”?**

The Supreme Court in *Liu* left to the District Court the question of whether, and to what extent, the practice of depositing disgorgement funds with the Treasury satisfies the SEC’s obligation to award relief “for the benefit of investors” and the limitations of 15 U.S.C. §78u(d)(5).

The Supreme Court emphasized, however, that the parties “do not identify a specific order in this case directing any proceeds to the Treasury.” “If one is entered on remand, the lower courts may evaluate in the first instance whether that order would be for the benefit of investors and consistent with equitable principles.” *Liu*, 140 S.Ct. at 1947-1949.

Because the District Court did not enter such an order directing proceeds to the Treasury, the court does not address the aforementioned question in any of its remand proceedings.

## Applicant Details

First Name	<b>Garrett</b>
Last Name	<b>Eldred</b>
Citizenship Status	<b>U. S. Citizen</b>
Email Address	<a href="mailto:gne5@georgetown.edu">gne5@georgetown.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>2350 Washington Place #518</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20018</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	<b>6786446717</b>

## Applicant Education

BA/BS From	<b>Georgia State University</b>
Date of BA/BS	<b>May 2021</b>
JD/LLB From	<b>Georgetown University Law Center</b>
	<a href="https://www.nalplawschools.org/employer_profile?FormID=961">https://www.nalplawschools.org/employer_profile?FormID=961</a>
Date of JD/LLB	<b>May 19, 2024</b>
Class Rank	<b>School does not rank</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>The Georgetown Law Journal</b>
Moot Court Experience	<b>Yes</b>
Moot Court Name(s)	<b>Georgetown Barristers' Council - Trial Advocacy Division</b>

## Bar Admission

### **Prior Judicial Experience**

Judicial Internships/  
Externships      **Yes**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Butler, Paul  
paul.butler@law.georgetown.edu  
Roth, Mindy  
mindy\_roth@cfc.uscourts.gov  
202-357-6362  
Hopwood, Shon  
srh90@georgetown.edu  
Sunder, Madhavi  
ms4402@georgetown.edu  
(202) 662-4225

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

## GARETT ELDRED

2350 Washington Place NE #518, Washington, DC 20018 • 678-644-6717 • [gne5@georgetown.edu](mailto:gne5@georgetown.edu)

June 11, 2023

Dear Judge Jamar K. Walker,

I am a Haitian American and a rising 3L Opportunity Scholar at Georgetown University Law Center, and I am writing to apply for a Judicial Clerkship in your chambers. I seek the role not only because it will be beneficial for my writing skills and career but also because it will give me the chance to earn a lifelong mentor. I am confident that I would be successful in your chambers due to my passion for the work, my dedication to excellence, and our shared set of interests and values. I strongly admire your passion for service, which is evidenced by your time as a federal prosecutor and your volunteer experiences with Virginia21, Kamp Kappa Street Law Program, and the DC Gay Flag Football League. These distinctions, amongst others, are why I enthusiastically wish to clerk for you. I humbly believe that my experiences, skillset, and character make me an excellent candidate for this role.

Prior to pursuing a future in law, I established my work ethic and learned the value of teamwork as a Division I student-athlete. I would then earn employment as a filing clerk at Nall & Miller, LLP, where I began developing my writing skills through drafting and filing legal documents. The summer before entering law school, I further developed these skills at Greathouse Trial Law, LLC, by gathering precedent relevant to our cases and drafting legal documents.

Since entering law school, I have had several experiences that have equipped me with the requisite knowledge and skills to positively contribute to your chambers. I have gained an understanding of courtroom procedures by serving as a Judicial Extern in the Court of Federal Claims, Office of Special Masters, and through my membership on Georgetown's Trial Advocacy Team, which led me to win Georgetown's annual 100+ participant Greenhalgh Trial Advocacy Competition, amongst other awards. I was also able to garner practical experience as a Summer Associate at two law firms last summer and by working in-house at AT&T as well. Last fall, I further enhanced my research and writing skills by working as a Research Assistant to tenured Professor Madhavi Sunder.

Currently, I am honing my skills as the Senior Development Editor of *The Georgetown Law Journal* and by working as a Summer Associate at two firms again this summer. This fall, I will again serve as an extern in the public sector and as a Research Assistant to Professor Shon Hopwood. I will conclude my law school experience by completing hundreds of pro bono hours as a Student Attorney in Georgetown's Civil Rights Clinic to better serve those in need and further enhance my skills.

Most importantly, I would like to clerk for you because I believe that our similarities are indicative of shared interests and values. As a member of several civic organizations like yourself, I can better appreciate your passion for service and dedication to the principles that make lawyers stand out as pillars in our communities. Before entering law school, I upheld this commitment by establishing the "It Could Be You Initiative", an initiative created to serve the homeless population in Atlanta, GA, and by serving as the Community Service Chair for the Zeta Mu chapter of Alpha Phi Alpha Fraternity, Inc. Since entering law school, I have further worked to uphold this commitment by serving as the Community Service Chair of Georgetown's Black Law Students Association and by participating in service efforts with Georgetown's Christian Legal Society. I believe shared interests and principles lead to stronger relationships, which is why I am confident that my time in your chambers would be rewarding, productive, and harmonious if given the opportunity.

I hope to work and learn under your tutelage, and I welcome any opportunity to discuss my qualifications in greater detail. I can be reached at (678) 644-6717 or by email at [gne5@georgetown.edu](mailto:gne5@georgetown.edu). Thank you so much for your consideration.

Best,

Garrett Eldred

## GARETT ELDRED

2350 Washington Place NE #518, Washington, DC 20018 • 678-644-6717 • gne5@georgetown.edu

### EDUCATION

#### GEORGETOWN UNIVERSITY LAW CENTER

Washington, D.C.

*Juris Doctor*

May 2024

GPA: 3.42

Journal: *The Georgetown Law Journal*, Senior Development Editor Vol. 112

Honors: Georgetown Greenhalgh Trial Advocacy Competition - First Place  
Week One Teaching Fellow - Spring 2023  
Greene Broillet & Wheeler National Civil Trial Competition - Honored Advocate  
Opportunity Scholar  
Kirkland & Ellis Afro Scholar  
AT&T Scholar

Activities: Barristers' Council - Trial Advocacy Division  
Black Law Students Association  
Christian Legal Society  
RISE  
Sigma Delta Tau Legal Fraternity, Inc.

#### GEORGIA STATE UNIVERSITY

Atlanta, GA

*Bachelor of Science in Education*

May 2021

Honors: 4X Dean's List  
Division I Football Scholarship Recipient  
Hope Scholarship Recipient  
Mr. Unstoppable Winner

Activities: Alpha Phi Alpha Fraternity, Inc.  
Division I Student Athlete  
NAACP at Georgia State University

### EXPERIENCE

#### CIVIL RIGHTS CLINIC

Washington, DC

*Student Attorney*

January 2024 – May 2024

- Anticipating serving as the lead counsel on complex litigation matters in areas of voting rights, employment discrimination, housing discrimination, police brutality, conditions of carceral confinement, and equal protection in education, among others

#### GEORGETOWN UNIVERSITY LAW CENTER

Washington, DC

*Research Assistant to Professor Shon Hopwood*

September 2023 – December 2023

- Anticipating conducting research and delivering memorandums in areas of criminal and constitutional law

#### BALCH & BINGHAM LLP

Atlanta, GA

*2L Summer Associate*

July 2023 – August 2023

- Anticipating working on complex litigation matters in areas of financial service, healthcare, and energy

#### BAKER & HOSTETLER LLP

Atlanta, GA

*2L Summer Associate*

May 2023 – July 2023

- Created a slide deck presentation to propose improvements to a Major League Baseball team's Fan Guide and Giveaway Policy
- Drafted a memorandum evaluating the enforceability of a proposed resolution between a Section 8 property owner and a city
- Drafted a memorandum evaluating settlement amounts and reasons thereof for cases of inmate death due to deliberate indifference
- Drafted a memorandum evaluating the Plaintiff burden of proof in data breach cases across all twelve federal circuits
- Drafted a memorandum evaluating the enforceability of a liquidated damages provision in a service agreement between a major hospital and insurance provider
- Anticipating working on more complex litigation matters in areas of healthcare and labor and employment

#### U.S. COURT OF FEDERAL CLAIMS, OFFICE OF SPECIAL MASTERS

Washington, DC

*Judicial Intern to Special Master Mindy Michaels Roth*

September 2022 – November 2022

- Drafted opinions related to Motions for Attorney's Fees and Costs based on the "reasonable basis for bringing the case" standard
- Drafted memorandums evaluating how cases should be decided in accordance with the standard of the Vaccine program
- Drafted questions to be asked by Special Master Roth to Expert Witnesses during hearings
- Attended a judicial conference hosted by the Court to learn more about effective advocacy and statutory interpretation

**GEORGETOWN UNIVERSITY LAW CENTER**

*Research Assistant to Professor Madhavi Sunder*

**Washington, DC**

September 2022 – December 2022

- Drafted a series of questions to be asked of Counsel for the Respondent in Georgetown's Moot of *Warhol v. Goldsmith*, a pending Supreme Court case pertaining to Copyright law
- Researched and found new Copyright issues to be discussed and debated amongst students in class
- Revised class powerpoints to be more electronically accessible and reflect recent development in Copyright law

**BALCH & BINGHAM LLP**

*1L Summer Associate*

**Atlanta, GA**

July 2022 – August 2022

- Drafted a memorandum evaluating the legality and constitutionality of a proposed statute's no class action clause and exclusive remedy provision
- Drafted a memorandum evaluating the elements and evidentiary burden of a claim for attorney's fees under OCGA § 13-6-11
- Drafted a memorandum evaluating the limits of an agreement's clause limiting damages to only those which are direct, and not consequential, under New Jersey law
- Assisted in the preparation of a pro-bono hearing regarding a temporary restraining order in Cobb County Magistrate Court.
- Drafted a memorandum evaluating the effects of an intervening clause within a consent order, and a revised intervening clause to clarify the agreement under Georgia law
- Drafted a memorandum evaluating how three Georgia statutes interplay with each other to determine the necessities to authenticate medical records and satisfy the "business records exception"
- Drafted a memorandum evaluating the elements and defenses of an inverse condemnation claim under Georgia law
- Drafted a memorandum evaluating the elements and defenses of a spoliation claim under Georgia law
- Drafted a memorandum evaluating the parameters of non-compete/non-solicit provisions within employment contracts, and a provision incorporating those parameters for an employment contract under Georgia law

**AT&T**

*Summer Law Fellow*

**Atlanta, GA**

July 2022

- Drafted a memorandum to resolve an anti-compete matter brought before the Public Utilities Commission of California
- Prepared for depositions of opposing witnesses and client witnesses to resolve labor and employment disputes
- Contributed viable arguments in strategic planning meetings, based on legal research, to resolve labor and employment disputes

**KILPATRICK TOWNSEND & STOCKTON LLP**

*1L Summer Associate*

**Atlanta, GA**

May 2022 – July 2022

- Drafted a memorandum evaluating the reach of a settlement agreement's "in connection with" clause despite a merger clause within the agreement, under Georgia law
- Drafted a memorandum evaluating the enforceability of a joint defense agreement under Tennessee law
- Created a slide deck used for arbitrating a trademark dispute for a Fortune 500 telecommunications holding company
- Drafted notices of opposition and closing letters for trademark disputes for a Fortune 500 sportswear manufacturer and Fortune 500 airline company
- Drafted portions of an agreement to eliminate cellular data within prisons to improve safety measures for a Fortune 500 telecommunications holding company
- Created a case calendar following FRCP and Local Rules for an employment discrimination case between a Fortune 500 telecommunications holding company and one of their former executives
- Volunteered for the firm's Law Camp for the Boys & Girls Club of Metro Atlanta by conducting a presentation on professional attire and coaching the winning team during the camp's Mock Trial Competition

**GREATHOUSE TRIAL LAW, LLC**

*Litigation Assistant/ Summer Intern*

**Atlanta, GA**

May 2021 – August 2021

- Filed and sorted through evidence for the firm's most consequential personal injury cases
- Corresponded with clients daily to update them on case proceedings and to request documentation as needed
- Drafted dismissals and other necessary documentation to complete closing procedures
- Assisted in depositions and meetings with opposing counsel to offer support and learn more about the litigation process

**NALL & MILLER, LLP**

*Filing Clerk*

**Atlanta, GA**

December 2020 – April 2021

- Filed documents and corresponded with clients to manage a caseload of thirty matters relating to transportation law
- Drafted Request for Documents Forms to advance the process of discovery
- Independently oversaw the distribution of all mail for the firm's attorneys and staff
- Led in the reorganization of the office's layout and the transition from physical to digital case filing

**VOLUNTEER EXPERIENCE**

- Alpha Phi Alpha Fraternity, Inc. – Community Service Chairman, Dean of Membership, and Chaplain
- Georgetown Black Law Students Association – Community Service Chairman
- It Could Be You Initiative – President and Founder (An Initiative Established to Serve Atlanta's Homeless Population)
- NAACP at Georgia State University – Health Committee Chairman

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Garrett N. Eldred  
GUID: 835231260

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center  
Juris Doctor  
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	001	94	Civil Procedure Aderson Francois	4.00	B	12.00	
LAWJ	002	41	Contracts Gregory Klass	4.00	B	12.00	
LAWJ	004	42	Constitutional Law I: The Federal System	3.00	B	9.00	
LAWJ	005	43	Legal Practice: Writing and Analysis Erin Carroll	2.00	IP	0.00	
				EHrs	QHrs	QPts	GPA
Current				11.00	11.00	33.00	3.00
Cumulative				11.00	11.00	33.00	3.00

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	003	94	Criminal Justice Christy Lopez	4.00	B	12.00	
LAWJ	005	43	Legal Practice: Writing and Analysis Erin Carroll	4.00	B+	13.32	
LAWJ	007	94	Property Madhavi Sunder	4.00	B+	13.32	
LAWJ	008	42	Torts Brishen Rogers	4.00	B+	13.32	
LAWJ	304	50	Legislation Caroline Fredrickson	3.00	B+	9.99	
				EHrs	QHrs	QPts	GPA
Current				19.00	19.00	61.95	3.26
Annual				30.00	30.00	94.95	3.17
Cumulative				30.00	30.00	94.95	3.17

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	110	08	Copyright Law Madhavi Sunder	3.00	A-	11.01	
LAWJ	126	05	Criminal Law Paul Butler	3.00	B+	9.99	
LAWJ	1491	131	~Seminar Deborah Carroll	1.00	A-	3.67	
LAWJ	1491	132	~Fieldwork 2cr Deborah Carroll	2.00	P	0.00	
LAWJ	1491	47	Externship I Seminar (J.D. Externship Program) Deborah Carroll		NG		
LAWJ	1493	05	Prison Law and Policy Shon Hopwood	3.00	A	12.00	
LAWJ	360	05	Legal Research Skills for Practice Rachel Jorgensen	1.00	A	4.00	
In Progress:				EHrs	QHrs	QPts	GPA
Current				13.00	11.00	40.67	3.70
Cumulative				43.00	41.00	135.62	3.31

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	1196	08	Religion, Morality and Contested Claims for Justice Seminar	2.00	A-	7.34	
LAWJ	1265	05	Advanced Constitutional Law Seminar: The Creation of the Constitution	3.00	B+	9.99	
LAWJ	1335	05	Race, Inequality, and Justice	2.00	A-	7.34	
LAWJ	165	09	Evidence	4.00	A-	14.68	
LAWJ	1650	05	Income and Public Benefits	3.00	A	12.00	
LAWJ	351	02	Trial Practice	2.00	A	8.00	
LAWJ	610	05	Week One Teaching Fellows (Public Speaking For Lawyers)	1.00	P	0.00	
Transcript Totals							
				EHrs	QHrs	QPts	GPA
Current				17.00	16.00	59.35	3.71
Annual				30.00	27.00	100.02	3.70
Cumulative				60.00	57.00	194.97	3.42
End of Juris Doctor Record							

**Georgetown Law**  
600 New Jersey Avenue, NW  
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Garrett Eldred for a clerkship. Garrett was a student in my Criminal Law class. He was an active participant in class discussion and stopped by frequently during office hours. I serve as a faculty advisor to the Georgetown Black Law Student Association, and I have also gotten to know Garrett through his leadership roles in that organization, including his work as chairperson for community service. Based on these experiences I recommend him with great enthusiasm.

Garrett is an extremely bright, ambitious, and disciplined student with a great work ethic. He distinguished himself in my course with his insightful legal analysis and strong communications skills. I think these qualities would serve him well in a clerkship. They are evidence of the high expectations Garrett sets for himself, and his ability to deliver. As a member of the prestigious Georgetown Law Journal, which is the flagship legal journal at our school, Garrett has had an excellent opportunity to advance his research and writing skills. I am impressed, but not surprised, that Garrett has performed exceptionally in trial advocacy competitions, including finishing in first place in the Georgetown Greenhalgh Trial Advocacy Competition.

I should also note that Garrett is an exceptionally kind and mature law student. He is warm, respectful, has a fine sense of humor and a great personality. He would be the kind of law clerk that everyone in the courthouse likes, respects, and admires. He is very excited about the potential of a clerkship and I have no doubt that you would find him to be an asset to your chambers. I know that you have many highly qualified applications. I respectfully urge your consideration of Garrett. I think you would be extremely satisfied with his work and his character.

Respectfully,

Paul D. Butler  
The Albert Brick Professor in Law

Paul Butler - paul.butler@law.georgetown.edu



**FROM THE CHAMBERS OF SPECIAL MASTER MINDY MICHAELS ROTH**  
**UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**  
**717 MADISON PLACE**  
**WASHINGTON, DC 20439**

June 13, 2023

To Whom It May Concern:

I am pleased to provide a recommendation for Garrett Eldred. I am a Special Master at the United States Court of Federal Claims, the court with exclusive jurisdiction over claims related to vaccine injuries. Garrett was an intern in my chambers during the fall semester of his 2L year of law school in 2022. I was quickly impressed by Garrett's ability to readily grasp new concepts. He was also a delight to have in Chambers.

Garrett attended status conferences, a hearing, drafted memorandum and assisted with the drafting of decisions on Motions. Additionally, I assign each of my interns the task of drafting a memorandum on a challenging legal/medical issue. These assignments demand a thorough review of medical records and the study of medical conditions. This adds an element of complexity to the legal writing process with which most law students are unfamiliar. Additionally, these assignments call for more foundational legal writing exercises, such as the summarization of facts and procedural history. Finally, and most importantly, impeccable legal analysis is vital in all decisions, as Vaccine Program cases are appealable to the United States Court of Federal Claims. Garrett was assigned the task of drafting a decision in a case in which a complicated medical issue was involved. Garrett's work was on par with what I expect of my new law clerk hires. Garrett showed growth in his writing abilities over the semester due to his genuine desire to learn and improve.

Garrett is intelligent, diligent, mature, and professional, as was demonstrated through his demeanor and work product. Working with Garrett was a genuine pleasure. I am confident that he would be as welcome an addition to your chambers as he was to my chambers. In the event you may wish to discuss Garrett's qualifications further, I can be reached at (202) 403-9006.

Sincerely,

Mindy Michaels Roth  
Mindy Michaels Roth  
Special Master



**Georgetown Law**  
600 New Jersey Avenue, NW  
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter with enthusiastic support for Garrett Eldred, who is applying for a clerkship in your chambers. I write to share my experiences as his professor, and why he has demonstrated that he would be a great fit for a clerkship.

Garrett is a Haitian American, first-generation law school student with many admirable qualities. I first noticed those qualities when he attended my Prison Law and Policy class this past semester, where we cover issues facing incarcerated people, caselaw on their rights, and how, as a policy matter, we can fix the American criminal justice system. Garrett's comments were always illuminating and showed a genuine hunger for community service, a humbleness to understand the issues, along with grit and wisdom.

Garrett's childhood in Atlanta would lead him to both good and bad parts of town, where he developed a keen understanding of how to connect with people regardless of their background or differences. I believe this characteristic is indicative of why he would make a great clerk. Through my conversations with Garrett and his participation in my course, I have found him to be both of strong conviction, but also with the discernment to know how to disagree without being disagreeable. Garrett's also possesses a consistent professionalism that would make him an ideal clerk, and that is why I am proud to offer this letter on his behalf.

Garrett deeply desires to make change in the world. During his days in undergraduate school, Garrett created the "It Could Be You Initiative," a program designed to help the homeless population in and around Georgia State University. He has continued that service at Georgetown Law through his service in the Black Students Association, the RISE program, and Christian Legal Society.

Garrett also has the legal chops to be worthy of a clerkship. He won the trial advocacy competition; he is an editor on the Georgetown Law Journal; and he scored an A in my class, one of the best grades on my admittedly difficult exam that tests both the application of legal principles and policy issues. He has also received several awards. His GPA has consistently gone upward since his first semester (a trait I see with many first-generation law school students), which provides a positive trend for his clerkship prospects. And he has secured a summer associate position at Baker & Hostetler in Atlanta, where he plans to practice.

But what makes Garrett special is his personality. He is a thoughtful and engaging person. The kind of person who is equally adept at discussing criminal justice policy, the rules of statutory interpretation, or college football. He was a joy as a student, and I have no doubt he will make an excellent clerk. And he desires a clerkship for the right reason, as he wants the experience to become a better lawyer and to serve the public.

If you need any additional information, please do not hesitate to contact me.

Sincerely,

Shon Hopwood  
Associate Professor of Law

Shon Hopwood - [srh90@georgetown.edu](mailto:srh90@georgetown.edu)

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my sincere pleasure to provide my highest and most enthusiastic recommendation for Mr. Garrett Eldred to be a judicial law clerk in your chambers. Mr. Eldred is one of our shining stars at Georgetown Law. An Opportunity Scholar, he is an award-winning student advocate and an editor of the prestigious *Georgetown Law Journal*. He is a student who has successfully balanced a broad array of extracurricular activities with academic excellence and an ongoing commitment to serving the public interest. He would make an excellent law clerk in your chambers.

I have known Mr. Eldred for almost two years. He has been a model student in both my 1L Property course (Spring 2022) and my upper level Copyright Law course (Fall 2022). Additionally, Mr. Eldred served as my Research Assistant during the Fall 2022 semester, during which time I observed him seamlessly juggle his coursework, research, and extensive extracurricular activities. As Mr. Eldred's professor, supervisor, and mentor, I have seen his passion for the law and his commitment to excellence firsthand. We have had numerous conversations discussing his legal aspirations. He always sat in the front row of my class and consistently offered contemporary applications of our coursework, some of which I incorporated into my PowerPoints to teach the rest of the class.

Mr. Eldred's academic achievement in law school has steadily improved each semester and I am confident that his legal analysis and writing skills are very strong. He received an A- in my copyright course this past semester, just missing the cutoff for an A by a few points. His final exam demonstrated mastery of the wide range of legal concepts covered in the class, and strong organizational, critical thinking, and writing skills.

Even more important is Mr. Eldred's work ethic, drive to learn and develop mastery, and commitment to obtain work and extracurricular experiences that will help him to continually build his research, writing, and advocacy skills. His achievements here are extraordinary. As an undergraduate he received the aptly named honorific of "Mr. Unstoppable"—indeed, Mr. Eldred has continued to be unstoppable at Georgetown Law! He won first place in the Georgetown Greenhalgh Trial Advocacy Competition and was named an Honored Advocate in the Greene Broillet & Wheeler National Civil Trial Competition. Mr. Eldred is the first Black man to win Georgetown's Greenhalgh Trial Advocacy Competition. (His co-counsel was the first Black woman to obtain the same feat.) Mr. Eldred aspires to be the first Black man to be editor-in-chief of the *Georgetown Law Journal*, and I am confident he can achieve this!

Mr. Eldred hopes to one day be a litigator and courtroom attorney. To this end, in addition to his demanding extracurricular activities, he has pursued a diverse set of work experiences that set him up to be an enormously successful judicial law clerk and attorney. Last summer, he worked in three settings, serving as a law fellow at AT&T, Balch & Bingham LLP, and Kilpatrick Townsend & Stockton LLP in Atlanta. (The three impressive offers demonstrate what an attractive and sought after candidate Mr. Eldred is!) Mr. Eldred wrote numerous memoranda and drafted a variety of legal documents in these roles. He further honed his legal research and writing skills with an externship in the court of Federal Claims, as an Editor of the *Georgetown Law Journal*, and as my research assistant. Mr. Eldred is conscientious and deliberate about seeking out opportunities – such as this clerkship – that will make him the very best advocate he can be.

As my research assistant, Mr. Eldred handled numerous assignments and impressed me with his thoroughness and attention to detail. On one assignment applicable to his work as a clerk, Mr. Eldred provided me with questions to ask during Georgetown's Law's moot of *Warhol v. Goldsmith*, a copyright case before the Supreme Court in which I was asked to serve on the panel questioning the attorney arguing the case before the Supreme Court. Mr. Eldred's questions were sharp and relevant, and were among questions we also debated in my Copyright class amongst the students as we discussed the viability of the arguments made in the case.

At the same time, Mr. Eldred has been and continues to be committed to public service work. While in college, he established the "It Could Be You Initiative," which sought to feed, clothe, and uplift the homeless population surrounding Georgia State University. At Georgetown Law, Mr. Eldred serves as the Community Service Chair of the Black Law Students Association and is an avid participant in the school's Christian Legal Society. These endeavors demonstrate Mr. Eldred's commitment to not only honing his skills as a writer and advocate, but also his commitment to being a grounded servant for humanity. I am confident that Mr. Eldred will continue to dedicate himself to pro bono work in the public interest to help others less fortunate to have the opportunities that were so critical for him.

That Mr. Eldred performed his work for me so well while being involved in numerous and significant extracurricular activities is notable. Mr. Eldred's discipline and time management skills, which he learned during his time as a Division 1 Student Athlete,

Madhavi Sunder - ms4402@georgetown.edu - (202) 662-4225

enable him to give serious attention to all of these organizations and activities without neglecting his coursework, which is truly admirable.

Mr. Eldred's impressive resume notwithstanding, my favorite thing about Mr. Eldred is his warm, charismatic, and kind personality. He is amicable and adaptable, able to get along with pretty much anyone. Mr. Eldred had a nomadic upbringing with multiracial parents. This allowed him to come in contact with people from all walks of life, and equipped him with a welcoming and inclusive spirit. As a clerk, Mr. Eldred will be working very closely with his judge and fellow clerks. I am confident that Mr. Eldred will be a joy and delight to work with.

I unreservedly give my very highest recommendation to Mr. Eldred. I am confident that he has the work ethic, skillset, personality, and intellectual acuity required to be a successful judicial clerk. Thank you for your consideration, and please feel free to contact me with further questions at [ms4402@georgetown.edu](mailto:ms4402@georgetown.edu).

Sincerely,

Madhavi Sunder  
Frank Sherry Professor of Intellectual Property  
Associate Dean for International and Graduate Programs

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**GARETT ELDRED**

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**WRITING SAMPLE**

---

The following is a case comment I wrote in June 2022 for the Georgetown University Law Center Law Journal Write-On Competition. I was required to draw on a limited packet of sources to produce a comment no longer than 2,200 words, excluding footnotes. The comment was titled “Inaction Calls for Action: Why the Tenth Circuit’s Determination that the Defendants in *Strain* were not Deliberately Indifferent was Incorrect.” This case comment is my own independent work.

## I. Introduction

“The Fourteenth Amendment prohibits deliberate indifference to a pretrial detainee’s serious medical needs.”<sup>1</sup> Circuit courts have disagreed on the proper standard for a pretrial detainee’s deliberate indifference claim.<sup>2</sup> This disagreement stems from how the courts interpret the Supreme Court’s holding in *Kingsley v. Hendrickson*.<sup>3</sup>

*Kingsley* set forth an objective standard for pretrial detainee excessive force claims which only require that an official *should have* known that his actions were unreasonable.<sup>4</sup> The Court chose an objective standard as opposed to the subjective standard used for convicted prisoners’ excessive force claims which require a subjective display of malicious intent.<sup>5</sup> The Court reasoned that there is a greater need to protect pretrial detainees than convicted prisoners because pretrial detainees are presumed completely innocent.<sup>6</sup> Thus, the Court set forth a more lenient standard, easing the burden on pretrial detainees who seek redress for their suffered harm.<sup>7</sup>

The Second and Ninth Circuits have extended *Kingsley*’s objective standard to pretrial detainee deliberate indifference claims.<sup>8</sup> The Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have declined to extend *Kingsley*’s objective standard and instead set forth a more stringent subjective standard, requiring a plaintiff to show proof that a jail official was subjectively aware of a pretrial detainee’s serious medical need.<sup>9</sup>

### A. Background of Strain

The morning after Thomas Pratt (Mr. Pratt), a pretrial detainee, was booked into the Tulsa County Jail (the Jail), he complained of alcohol withdrawal and requested detox mediation.<sup>10</sup> A nurse conducted a drug and alcohol withdrawal assessment of Mr. Pratt that afternoon where he informed her that he had habitually drank fifteen-to-twenty beers per day for the past decade.<sup>11</sup>

Staff admitted Mr. Pratt to the Jail's medical unit, conducted a mental health assessment, documented his withdrawal symptoms, but never gave him the requested detox medication.<sup>12</sup>

Days later, a jail nurse conducted a withdrawal assessment, which revealed worsening symptoms.<sup>13</sup> The nurse finally gave Mr. Pratt Librium but it proved ineffective.<sup>14</sup> Despite the severity of Mr. Pratt's symptoms, and an assessment tool advising the nurse to contact a physician, the nurse failed to contact a physician.<sup>15</sup> The nurse also failed to check Mr. Pratt's vitals or perform any additional assessments.<sup>16</sup>

Approximately eight hours later, a jail doctor examined Mr. Pratt and noticed a two-centimeter cut on his forehead and a pool of blood in his cell.<sup>17</sup> The doctor, aware of Mr. Pratt's earlier symptoms from his medical records, observed Mr. Pratt's disoriented state, but only gave him Valium without sending him to the hospital for suitable care.<sup>18</sup> Another nurse encountered Mr. Pratt later that afternoon and noted that he needed assistance with daily living activities.<sup>19</sup> Yet again, the staff did not escalate Mr. Pratt's level or place of care.<sup>20</sup>

The next morning, a licensed professional counselor (LPC) conducted a mental health evaluation of Mr. Pratt.<sup>21</sup> The LPC observed Mr. Pratt struggling to answer questions and determined the cut on his forehead was unintentional.<sup>22</sup> Nevertheless, the LPC declined to seek further care for Mr. Pratt.<sup>23</sup>

That afternoon, the doctor assessed Mr. Pratt again and noted that he was underneath the sink in his cell with a cut on his forehead.<sup>24</sup> Another nurse observed Mr. Pratt around midnight, but he would not get up, so she did not check his vitals.<sup>25</sup> Just before 1 a.m., a detention officer found Mr. Pratt lying motionless on his bed and called for a nurse. Mr. Pratt had suffered a cardiac arrest and was then finally sent to the hospital.<sup>26</sup> The hospital later discharged Mr. Pratt with a seizure disorder and other ailments that left him permanently disabled.<sup>27</sup>



Mr. Pratt's guardian, Faye Strain (Ms. Strain) brought a § 1983 action against county officials, jail medical staff, and municipalities for their deliberate indifference to Mr. Pratt's serious medical needs.<sup>28</sup> Ms. Strain argued that deliberate indifference to a pretrial detainee's serious medical needs includes only an objective component and that there were sufficient facts to support her claim that the defendants were deliberately indifferent.<sup>29</sup> The defendants argued that deliberate indifference to a pretrial detainee's serious medical needs includes both an objective and a subjective component, and that Ms. Strain met neither component.<sup>30</sup> The District Court agreed with the defendants, granting their motions to dismiss.<sup>31</sup> Ms. Strain appealed to the Tenth Circuit.<sup>32</sup>

### *B. Holding*

The Tenth Circuit affirmed the lower court's ruling.<sup>33</sup> Judge Carson, writing for the court, held that Ms. Strain failed to allege sufficient facts to support her deliberate indifference claims.<sup>34</sup> The court reasoned that *Kingsley v. Hendrickson* applied solely to excessive force claims, not on the status of the detainee, and thus should not be extended to deliberate indifference claims brought by pretrial detainees.<sup>35</sup> Next, they asserted that deliberate indifference infers a subjective component.<sup>36</sup> They concluded that the defendants were not deliberately indifferent and held that Ms. Strain's complaint failed to show that the defendants were subjectively aware of Mr. Pratt's serious medical needs and acted objectively unreasonable under the circumstances.<sup>37</sup> They further held that the municipality defendant could not be held liable because Ms. Strain did not allege a systematic failure of multiple officials equating to a constitutional violation.<sup>38</sup>

### *C. Roadmap*

The Tenth Circuit incorrectly granted the defendants' motions to dismiss because Ms. Strain alleged sufficient facts to support her deliberate indifference claims. This comment argues that the Supreme Court's objective standard should be logically applied to pretrial detainee deliberate

indifference claims for two reasons. First, *Kingsley* uniquely applies to pretrial detainees. Second, the defendants were both objectively and subjectively aware of the substantial risk of harm regarding Mr. Pratt's serious medical needs. Next, this comment argues that the defendants' inaction was unreasonable under the circumstances and amounted to more than mere negligence. Finally, this comment argues that the facts alleged indicate a custom or policy of the municipality defendant sufficient to hold them liable for deliberate indifference to Mr. Pratt's serious medical needs.

## II. Analysis

### A. *The Kingsley standard applies to pretrial detainee deliberate indifference claims.*

A holding can be extended to an issue distinct from the one it addresses if doing so would be logical.<sup>39</sup> Broad wording indicates that a holding can be logically extended beyond the exact issue it addresses.<sup>40</sup>

The Tenth Circuit declines to extend the objective standard used for pretrial detainee excessive force claims in *Kingsley* to pretrial detainee deliberate indifference claims.<sup>41</sup> The court argues that it is inappropriate to consider the *Kingsley* decision dispositive because it specifically addressed pretrial detainee excessive force claims, which are not the issue precisely presented in the case.<sup>42</sup> By doing so, the court erroneously focuses solely on the differences between the issues in each case instead of their similarities. The court ignores the principle that a holding can be extended so long as doing so is logical.

The extension is logical because the broad wording of *Kingsley* indicates that it may be extended beyond what it addresses. The *Kingsley* rule rested on the detainee's status and not excessive force,<sup>43</sup> as the court suggests.<sup>44</sup> Evidence of this is the remaining subjective standard for convicted prisoners' excessive force claims.<sup>45</sup> Further, the term "pretrial detainee" is used

significantly more than “excessive force,” in the opinion,<sup>46</sup> and when “excessive force” is used, it is almost exclusively in conjunction with “pretrial detainee.”<sup>47</sup> Thus, the *Kingsley* objective standard should logically apply to pretrial detainee deliberate indifference claims.

*B. The defendants were objectively and subjectively aware of Mr. Pratt’s medical needs.*

Following the *Kingsley* objective standard, a plaintiff need only show that a defendant-official knew, or should have known, that the pretrial detainee’s medical condition posed a serious risk to health or safety.<sup>48</sup> A defendant *should know* something if it is their responsibility to address it.<sup>49</sup> The subjective standard requires the defendant to have (i) *actually known* that the plaintiff’s medical condition posed a serious risk, or (ii) that the risk was obvious.<sup>50</sup>

Objectively, as his medical and mental caretakers, every defendant *should have known* of Mr. Pratt’s serious medical needs because it was their responsibility to address them.<sup>51</sup> However, even under the more stringent subjective standard, the facts alleged indicate that the defendants *actually knew* of Mr. Pratt’s serious medical needs, and that the needs were obvious. Mr. Pratt told the defendants about his habitual drinking from the time he entered the facility, and they witnessed his conditions worsen.<sup>52</sup> They were advised to seek additional help by a medical device and witnessed him curled up in a pool of blood with a cut on his head.<sup>53</sup> They witnessed him disoriented and struggling to answer questions.<sup>54</sup> They were even advised that he needed alternative living arrangements and saw him lying motionless in bed.<sup>55</sup> These facts indicate that the defendants were aware of the serious risk to Mr. Pratt’s health; even if they were not, the risk was obvious.

*C. A reasonable jail official, or medical staffer would have done substantially more to treat Mr. Pratt’s serious medical needs.*

If a defendant knows or should know that a plaintiff’s medical condition poses a serious risk to health or safety, and they disregard it, they will be held liable for deliberate indifference.<sup>56</sup> The

plaintiff must prove more than negligence but substantially less than subjective intent.<sup>57</sup> A person need only “consciously disregard”<sup>58</sup> a substantial risk by acting intentionally (on their own accord) and not by accident.<sup>59</sup> Conduct that is more than mere negligence includes grossly inadequate care, administering easier but less effective treatment, administering treatment that is so cursory as to amount to no medical care at all, and delaying necessary medical treatment.<sup>60</sup>

Here, the facts do not indicate that the actions or inaction taken by the defendants were by accident.<sup>61</sup> Thus, a ruling in the light most favorable to the plaintiffs would result in a finding that the defendants acted intentionally (on their own accord).

The alleged conduct signifies a reckless disregard more than mere negligence because it is an easier but less effective treatment, and so cursory as to amount to no medical care at all. After witnessing all the facts alleged, the defendants are said to have done nothing more than assess Mr. Pratt’s needs and give him sedatives.<sup>62</sup> The Tenth Circuit argues that Ms. Strain’s complaint goes toward the efficacy of treatment and not whether treatment was administered at all.<sup>63</sup> The court’s understanding is faulty because though treatment that proves ineffective is not grounds for a deliberate indifference claim, assessing one’s needs and prescribing sedatives cannot be deemed to be treatment.

Assessing needs only helps recognize and track medical needs but does nothing to treat them. Sedatives simply put a blanket over the actual need by easing side effects without treating the issue causing the effects – like giving Ibuprofen to someone with a gunshot wound. It was a lot easier for jail officials to simply feed Mr. Pratt sedatives instead of actually treating his serious medical needs. Furthermore, by delaying treatment until Mr. Pratt went into cardiac arrest, the jail officials heightened the likelihood of his harm. A reasonable jail official or medical staffer would have done

substantially more to treat Mr. Pratt's serious medical needs, and therefore the defendants' alleged inaction amounted to deliberate indifference.

*D. The facts alleged indicate the municipality defendant has a custom or policy of deliberate indifference toward pretrial detainees' serious medical needs.*

A municipality defendant can be held liable when shown to have a custom or policy which leads to a plaintiff's injuries.<sup>64</sup> In such a case, "the combined actions of multiple officials can amount to a constitutional violation even if no one individual's actions were sufficient."<sup>65</sup> A municipality can demonstrate a custom or policy of providing delayed emergency medical treatment to inmates by just their actions or inactions as opposed to a written policy or rule.<sup>66</sup> "Systemic deficiencies"<sup>67</sup> and "repeated examples of delayed or denied medical care"<sup>68</sup> can provide the basis for a finding of deliberate indifference.

Here, the facts alleged demonstrate repeated examples of delayed or denied medical care by individuals within the municipality. On several occasions, the facts alleged reveal that employees of the municipality assessed Mr. Pratt's serious medical needs and failed to act, resulting in permanent disability.<sup>69</sup> The repetitiveness of the issue indicates a custom or policy of delayed or denied medical care. Thus, Ms. Strain stated a valid claim based on the facts alleged, and the district court erred in granting the municipality defendant's motion to dismiss.

### **E. Conclusion**

The facts alleged indicate that Ms. Strain's deliberate indifference claims were sufficient to survive a motion to dismiss. First, *Kingsley* uniquely applied to pretrial detainees, and the Supreme Court's objective standard can be logically applied to pretrial detainee deliberate indifference claims. Secondly, the defendants were both objectively and subjectively aware of the substantial risk of harm regarding Mr. Pratt's serious medical needs. Third, the defendants' inaction was

unreasonable under the circumstances and amounted to more than mere negligence. Finally, the facts alleged indicate a custom or policy of the municipality defendant sufficient to hold them liable for deliberate indifference. Thus, the court erred in their judgement.

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<sup>1</sup> *Strain v. Regalado*, 977 F.3d 984, 987 (10th Cir. 2020).

<sup>2</sup> Some Circuits believe that pretrial detainee deliberate indifference claims warrant an objective standard, while others believe the standard should be subjective. *See, e.g., Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016). *But see, e.g., Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415, 419 (5th Cir. 2017); *Whiting v. Marathon County Sheriff's Dept.*, 382 F.3d 700, 703 (7th Cir. 2004); *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857, 860 (8th Cir. 2018); *Strain*, 977 F.3d at 987; *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

<sup>3</sup> *See generally Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (initiating an objective standard for excessive force claims brought by pretrial detainees).

<sup>4</sup> *See id.* at 389–90.

<sup>5</sup> *See id.*

<sup>6</sup> *See id.*

<sup>7</sup> *See id.*

<sup>8</sup> The Second and Ninth Circuits have held that the *Kingsley* objective standard should be applied to pretrial detainee deliberate indifference claims. *See, e.g., Darnell*, 849 F.3d at 29; *Castro*, 833 F.3d at 1069.

<sup>9</sup> The Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have held that the *Kingsley* objective standard does not apply to pretrial detainee deliberate indifference claims. *See, e.g., Alderson*, 848 F.3d at 419; *Whiting*, 382 F.3d at 703; *Whitney*, 887 F.3d at 860; *Strain*, 977 F.3d at 987; *McElligott*, 182 F.3d at 1255.

<sup>10</sup> *See Strain*, 977 F.3d at 987.

<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* at 988.

<sup>14</sup> *See id.*

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<sup>15</sup> *See id.*

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

<sup>22</sup> *See id.*

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *See id.*

<sup>27</sup> *See id.*

<sup>28</sup> *See id.*

<sup>29</sup> *See id.* at 989.

<sup>30</sup> *See id.*

<sup>31</sup> *See id.* at 988.

<sup>32</sup> *See id.*

<sup>33</sup> *See id.* at 987.

<sup>34</sup> *See id.* at 989.

<sup>35</sup> *See id.* at 991.

<sup>36</sup> *See id.*

<sup>37</sup> *See id.* at 995–96.

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<sup>38</sup> *See id.* at 997.

<sup>39</sup> *See Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018).

<sup>40</sup> *See Castro*, 833 F.3d at 1070.

<sup>41</sup> *See Strain*, 977 F.3d at 991.

<sup>42</sup> *See id.*

<sup>43</sup> *See generally Kingsley*, 576 U.S. 389 (initiating an objective standard solely for excessive force claims brought by pretrial detainees).

<sup>44</sup> *See generally Strain*, 977 F.3d 984 (holding *Kingsley* was unique to excessive force claims).

<sup>45</sup> *See Kingsley*, 576 U.S. at 400.

<sup>46</sup> *See generally Kingsley*, 576 U.S. 389.

<sup>47</sup> *See generally Kingsley*, 576 U.S. 389.

<sup>48</sup> *See Darnell*, 849 F.3d at 35.

<sup>49</sup> *See Miranda v. County of Lake*, 900 F.3d 335, 343 (7th Cir. 2018) (holding that jail officials should not have known about pretrial detainee's medical condition because it was primarily the responsibility of medical professionals whom they could reasonably rely upon).

<sup>50</sup> *See Castro*, 833 F.3d at 1068, 1072.

<sup>51</sup> *See Strain*, 977 F.3d at 987.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See Darnell*, 849 F.3d at 27, 29.

<sup>57</sup> *See Castro*, 833 F.3d at 1071.

<sup>58</sup> *Id.* at 1085.



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<sup>59</sup> *See id.*

<sup>60</sup> *See Davies v. Israel*, 342 F.Supp.3d 1302, 1308 (S.D. Fla., 2018).

<sup>61</sup> *See Strain*, 977 F.3d at 987.

<sup>62</sup> *See id.*

<sup>63</sup> *See id.* at 995.

<sup>64</sup> *See Castro*, 833 F.3d at 1075.

<sup>65</sup> *Strain*, 977 F.3d at 997.

<sup>66</sup> *See Castro*, 833 F.3d at 1075.

<sup>67</sup> *Davies*, 342 F.Supp.3d at 1309.

<sup>68</sup> *Id.*

<sup>69</sup> *See Strain*, 977 F.3d at 987.

## Applicant Details

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## Applicant Education

BA/BS From	Baylor University
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JD/LLB From	St. Mary's University School of Law
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Date of JD/LLB	May 18, 2021
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	St. Mary's Law Journal
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 10, 2023

The Honorable United States District Judge Jamar K. Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to submit my application for a 2024–25 clerkship in your chambers. I am a 2L at St. Mary's University School of Law, where I am the Editor in Chief of the *St. Mary's Law Journal*. I earned my B.A. from Baylor University.

In law school, I have maximized my opportunities to research, write, and learn about different areas of the law. On the *Law Journal*, I edited four articles. One required researching international law. For this assignment, I examined Nigerian and Kenyan constitutional law and researched how these legal systems addressed the rights of internally displaced persons. I also drafted a journal comment on the ethical responsibilities of personal injury attorneys. The comment discusses how lower fee arrangements may reduce the effort a personal injury lawyer expends on a case and the ethical implications of such conduct. Further, as a research assistant, I edited and cite-checked multiple chapters of *Federal Evidence Tactics*. I have also taken an advanced legal seminar, in which I drafted a detention order, a suppression order, and a proposed judicial opinion for a prisoner civil rights case. Combined, these research and writing opportunities have challenged me to think critically about different legal issues. I believe they have adequately prepared me to be a law clerk.

I also believe my work ethic and ability to multitask will make me a value-add to your chambers. I am constantly working on multiple projects, and I consistently complete them with efficiency. As Editor in Chief of the *Law Journal*, I manage the production of four different issues, oversee several large-scale events, and ensure our members comply with our bylaws. I recognize the importance of being organized, which is essential to meeting deadlines and maintaining my grades. Accordingly, I believe my sense of professional integrity will make me an effective and reliable law clerk.

Enclosed are my resume, list of references, writing sample, and transcript. If you need additional information, please reach me by phone at (361) 815-1984 or email at melizondo17@mail.stmarytx.edu. Thank you for your time and consideration.

Respectfully,  
Maximiliano Elizondo

## Maximiliano Elizondo

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### EDUCATION

#### St. Mary's University School of Law

San Antonio, TX

J.D. Candidate, expected 2024

2021 – Present

Rank: Top 5.5% (13/233); GPA: 3.67/4.0

Journal: Editor in Chief, *St. Mary's Law Journal* (Vol. 55)

Honors: Dean's List (top 10%): Fall 2021 & 2022

Faculty Award (highest exam score): Wills, Estates, and Trusts

Staff Editor Excellence Award

Publication: Comment, *The Impact the Monetary Value of a Case Has on Effort and Productivity Within the Field of Personal Injury*, 14 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS — (forthcoming 2024)

Activities: St. Mary's Criminal Law Association  
Hispanic Law Students Association

#### Baylor University, Waco, Texas

B.A., Political Science; Minor: History

Waco, TX

Study Abroad: Studied French in Paris, France

2017 – 2021

### EXPERIENCE

#### United States District for the Southern District of Texas

San Antonio, TX

Incoming Intern for the Hon. U.S. Magistrate Judge Julie Hampton

Summer 2023

#### United States District Court for the Western District of Texas

San Antonio, TX

Incoming Intern for the Hon. U.S. District Judge Jason Pulliam

Summer 2023

#### St. Mary's School of Law – Associate Dean Ramona L. Lampley

San Antonio, TX

Research Assistant

Winter 2022 – Present

- Researched reports published by the Federal Rules of Evidence Advisory Committee.
- Assisted with drafting and revising chapters of Dean Lampley's book, *Federal Evidence Tactics*.
- Reviewed case law and edited articles discussing car privacy and vehicle financing for military members.

#### Gowan Elizondo LLP

Corpus Christi, TX

Law Office Intern

Summer 2022

- Researched case law on the liability of ambulance operators and negligent patient transfers.
- Formulated motions, demand letters, and petitions.
- Drafted a response to a motion for summary judgment, which argued a claim for *respondeat superior* liability should proceed to trial.

#### Law Office of Scott M. Ellison – Scott Ellison

Corpus Christi, TX

Law Office Intern

Summer 2020

- Observed criminal proceedings and discussed legal theory with supervising attorney.

### INTERESTS & VOLUNTEER ACTIVITIES

- Weightlifting, reading western and horror novels, and painting miniature figures.
- SNIPSA Volunteer – Assist in puppy bathing, dog walking, and instrument cleaning. Volunteer approximately 3-6 hours per week.



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S00713040 Maximiliano D. Elizondo  
Jun 09, 2023 03:57 pm

## Academic Transcript

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"R" column denotes repeated course at St.Mary's University:

E = course was excluded from GPA calculation (lower grade)

I = course was included in GPA calculation (higher grade)

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

### Transcript Data

#### STUDENT INFORMATION

Name : Maximiliano D. Elizondo

#### Curriculum Information

##### Primary Program

Program: Juris Doctorate

Major and Department: Law, Law Department

\*\*\*Transcript type:Gateway Transcript is NOT Official \*\*\*

#### DEGREE AWARDED

Sought: Juris Doctorate

#### Curriculum Information

Program: Juris Doctorate

Major: Law

#### INSTITUTION CREDIT

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##### Term: Fall 2021

##### Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6335	LW	LCAP I	B	3.000	9.00	
LW	6477	LW	Federal Civil Procedure I	A-	4.000	14.68	
LW	6478	LW	Torts	A	4.000	16.00	
LW	6490	LW	Contracts	A	4.000	16.00	

##### Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	55.68	3.71
Cumulative:	15.000	15.000	15.000	15.000	55.68	3.71

Unofficial Transcript

##### Term: Spring 2022

##### Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6336	LW	LCAP II	B-	3.000	8.01	
LW	6341	LW	Criminal Law	B	3.000	9.00	
LW	6440	LW	Constitutional Law	A	4.000	16.00	
LW	6480	LW	Property	A-	4.000	14.68	

##### Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	14.000	47.69	3.41
Cumulative:	29.000	29.000	29.000	29.000	103.37	3.56

Unofficial Transcript

##### Term: Fall 2022

##### Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6705	LW	Jurisprudence:Gender & The Law	B	3.000	9.00	
LW	7230	LW	Law Journal - Staff Writer	P	2.000	0.00	
LW	7308	LW	Voting Law	A-	3.000	11.01	
LW	7427	LW	Wills, Estates, and Trusts	A	4.000	16.00	
LW	8318	LW	Mortgages & Real Estate Financ	A	3.000	12.00	

##### Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	13.000	48.01	3.69
Cumulative:	44.000	44.000	44.000	42.000	151.38	3.60

Unofficial Transcript

##### Term: Spring 2023

##### Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6200	LW	Adv Legal Wrting Federal Clerks	B+	2.000	6.66	
LW	6434	LW	Evidence	A	4.000	16.00	
LW	7310	LW	Business Associations	A	3.000	12.00	
LW	7505	LW	Law Journal Staff Writer	P	1.000	0.00	
LW	7629	LW	Animal Law	A-	2.000	7.34	
LW	8745	LW	International Human Rights	A	3.000	12.00	

##### Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	54.00	3.86
Cumulative:	59.000	59.000	59.000	56.000	205.38	3.67

Unofficial Transcript

#### TRANSCRIPT TOTALS (LAW)

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##### Level Comments:

Other Colleges Attended Graduated BA May 2021 Baylor University - Waco, Texas

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	59.000	59.000	59.000	56.000	205.38	3.67
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	59.000	59.000	59.000	56.000	205.38	3.67

Unofficial Transcript

#### COURSES IN PROGRESS

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##### Term: Fall 2023

Subject	Course	Level	Title	Credit Hours
LW	6333	LW	Professional Responsibility	3.000
LW	7331	LW	Family Law	3.000
LW	7375	LW	Constitution Criminal Procedure	3.000
LW	7694	LW	Sales	2.000
LW	8391	LW	Estate Planning	3.000
LW	8607	LW	Law Journal Editorial Board	2.000

Unofficial Transcript

[ [Financial Aid Eligibility Menu](#) ]

St. Mary's University is an equal education opportunity institution. The University's admission standards and practices are free from discrimination on the basis of age, sex, race, creed, color, disability, ethnicity or national origin. As required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, information regarding crime statistics, campus safety, crime prevention and victim's assistance is available on the St. Mary's University Web site at <http://www.stmarys.edu/police>. A paper copy of the report is available by request. Additionally, information regarding graduation and retention rates is available at <http://www.stmarytx.edu> All material sent to St. Mary's University becomes the property of the University and will not be released. Final admission will be granted only after a final transcript of high school and/or college work is received.

June 11, 2023

Dear Judge:

My name is Christopher A. Garza and I am a partner with Gowan Elizondo, LLP in Corpus Christi, Texas. I am writing to strongly recommend Maximiliano Elizondo for a clerkship with your court.

Our firm had the opportunity and pleasure to have Maximiliano as our intern in the summer of 2022. He was an outstanding and valuable asset to our firm during his time with us. Throughout the summer he consistently added value to the case projects assigned to him with on point research, excellent writing skills, and sharp arguments.

When I was in law school I had the opportunity to be a summer clerk for Judge Janis Graham Jack of the United States District Court for the Southern District of Texas. It was a wonderful experience and I know Maximiliano will be a great fit and valuable addition to any Court staff.

In short, I highly recommend Maximiliano Elizondo for a clerkship position without reservation. If you need any further assistance or any additional detail as to Maximiliano's work ethic or qualifications please reach out any time.

Sincerely,

Christopher A. Garza, Partner

Gowan Elizondo, LLP

361-537-8491

cgarza@gelawfirm.com

Chris Garza - cgarza@gelawfirm.com - (361) 537-8491



To Whom it May Concern:

My name is John D. Schroeder. I am a partner at Gowan Elizondo LLP, a personal injury law firm in Corpus Christi, Texas. Max Elizondo was one of my law clerks for the 2022 Summer, and I unequivocally give him my recommendation for a clerkship.

I had the opportunity to work directly with Max on a number of complex and diverse legal matters. One of particular remembrance was a complex, commercial wrongful death dram shop case with several intricate summary judgment arguments prior to a jury trial that Summer. Max dug deeply to locate case research addressing the nuances of vital arguments for our clients. I am proud to say that Max was part of the trial team that helped us obtain a multi-seven figure jury verdict that Summer for our clients' families.

Max is also an eager individual. Max was always ready for the next task to be assigned and wanted more! It was encouraging to know that once a legal research task was assigned to him, no further reminders or supervision was required. Max's finished product was always complete, with substantial thought put into whatever he was doing.

Additionally, Max's writing skills are equally impressive. His memorandums and emails to the partners were concise and consistently provided relevant case/statutory law. No matter the day or time, I found that Max promptly replied to correspondence and started a required task immediately, whether it was afterhours or on the weekend. In my opinion, Max will make an outstanding law clerk.

It is without hesitation that I recommend him for a federal clerkship. Please feel free to contact me directly should you want to discuss Max's qualifications or performance in further detail.

Sincerely,  
**John D. Schroeder**  
John D. Schroeder

---

CORPUS CHRISTI ♦ LAREDO ♦ BOERNE ♦ HOUSTON  
55 N. Carancahua Street, Suite 1400 • Corpus Christi, Texas 78401 • Telephone 361.651.1000  
Facsimile 361.651.1001 • Toll Free 866.833.0088 • [www.gelawfirm.com](http://www.gelawfirm.com)



June 13, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

Max Elizondo has my highest recommendation to work as a clerk in your chambers. Put simply, Max is probably the most pleasant and inspiring research assistant I have ever had. As his CV and cover letter describe, he excels in all areas. He will definitely serve you well in research and writing. But what his CV cannot tell you is how positive and cheerful Max is. He responds to every work request with a cheerful enthusiasm. He delves into research projects with an intellectual curiosity and delight at finding something new in the law that is refreshing for this mid-career law professor. His emails bring a smile to my face, and his attitude reminds me of what it was like to find so many aspects of legal research compelling, interesting, and motivating. He will make your life better just by showing up to work, and even more so when he delivers work product to you, because it will be excellent.

Max is, of course, one of our best and brightest. He will be Editor-in-Chief of the *St. Mary's Law Journal*, one of the highest leadership roles to which a student may aspire. Max is in the top 6% of his class and was the winner of the *Law Journal's* "Staff Writer of the Year" award (a fact I strongly suspect was based on his incredible work ethic and joyful approach to legal research). He has researched and drafted text for my treatise, *Federal Evidence Tactics*; he has edited numerous articles for me in my work on the *Consumer Finance Law Quarterly Report*; and he continues to tackle any number of idiosyncratic research requests I might throw at him. He's professional, happy, and responsive. More importantly, I trust him. He always meets deadlines before they are due, and he asks the right questions to get the job done. He is also an excellent writer and will soon have his own piece, *The Impact the Monetary Value of a Case has on Effort and Productivity Within the Field of Personal Injury*, published in the *St. Mary's Law Journal*.

Max has also found that one of the greatest satisfactions in life is giving of oneself to help those in need. He has volunteered over 50 hours at SNIPSA, a local animal shelter, and is one of the kindest law students with whom I've ever worked.

I know you receive hundreds, perhaps thousands, of qualified applications. I also know you will have students apply who have attended very highly ranked law schools or who have outstanding degrees or prior experience. But there is nothing that matters more in a clerk (as a former clerk) than a strong work ethic, a positive attitude, and a curious mind. You will get these in Max, and I'm positive you will think hiring him was one of the best decisions you could have made.

I hope you will give Max the opportunity to interview with you, and I hope you will take up my invitation to talk in more detail about his skills. My office number is (210) 436-3752. I would be happy to discuss with you more specifics about my experience working with this bright and talented student.

Sincerely,

Ramona Lampley  
Associate Dean for Research and Faculty Development  
Professor of Law  
St. Mary's University School of Law  
Editor, *Conference on Consumer Finance Law Quarterly Report*

Ramona Lampley - [rlampley@stmarytx.edu](mailto:rlampley@stmarytx.edu) - Lampley1

## **Maximiliano Elizondo**

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melizondo17@mail.stmarytx.edu | (361) 815-1984

### **WRITING SAMPLE**

This 11-page writing sample is a proposed judicial opinion I drafted for an advanced legal writing seminar. The opinion addresses whether a border patrol agent had reasonable suspicion to conduct a roving patrol stop.

My instructor provided the class with an outline with pre-written headings. Additionally, another student conducted a required peer review of the draft and a teaching assistant provided feedback on concision and other stylistic matters. My initial draft and revisions are entirely my own writing.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF TEXAS  
OAK TREE DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
VS.	§	CRIMINAL ACTION NO. X:XX-XX-XXXX
	§	
	§	
ALEXANDER DAVID SMITH	§	

**ORDER**

Defendant has filed a motion to suppress, and the Government has filed a response (Dkt. Nos. 28, 32). Having reviewed the arguments and applicable authority, the Court finds the motion to suppress (Dkt. No. 28) is **DENIED**.

**I. BACKGROUND**

**A. Procedural History**

Defendant was indicted for both conspiring to transport and actually transporting undocumented aliens. *See* 8 U.S.C. § 1324(a)(1)(A)(ii); § 1324(v)(I); (Dkt. No. 19). The Defendant filed a Motion to Suppress arguing the stop leading to his arrest was unconstitutional (Dkt. No. 28 at 7). Defendant argues the arresting agent obtained the evidence during an illegal seizure and must be suppressed under the “fruit of the poisonous tree doctrine” (*id.*). The Government responded (Dkt. No. 32).

**B. Factual Allegations**

The Court held a suppression hearing, which established the following: On September 11, 2022, Border Patrol Agent Christopher Peterson patrolled a section of I-35 (*id.* at 11). During this patrol, a Department of Defense (DOD) stationed at mile

marker 27 spotted Defendant's vehicle (*id.* at 14). The DOD station notified Agent Peterson the vehicle was traveling north on the west access road (*id.*). Once the Defendant passed mile marker 31, Agent Peterson began following him (*id.* at 17). As Agent Peterson trailed Defendant, he made the following observations:

1. The Defendant drove a very clean suburban registered to a rental company in Oklahoma (*id.* at 17–18);
2. The Defendant seemed very tense; two hands on the wheel and arms locked out (*id.* at 17);
3. Local drivers typically waved when they passed officers (*id.* at 24). Defendant did not wave (*id.*);
4. Once the Defendant noticed Agent Peterson behind him, the Defendant slowed down to 20 miles below the speed limit (*id.* at 18);
5. The Defendant accelerated and created a significant distance between himself and the agent (*id.*). In order to reach the Defendant, Agent Peterson had to reach speeds of 105 miles per hour (*id.* at 20); and
6. The Defendant wove in and out of traffic (*id.*).

After Agent Peterson concluded the Defendant behaved suspiciously, he conducted a roving patrol stop (*id.* at 22).

## II. LEGAL STANDARD

The Fourth Amendment governs whether a seizure is constitutional. *Terry v. Ohio*, 392 U.S. 1, 16 (1968). A seizure is constitutional under the Fourth Amendment if it is “reasonable.” *United States v. Brignoni-Ponce* 422 U.S. 873, 878 (1975). In

*Brignoni-Ponce*, the Supreme Court concluded “officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts” to warrant reasonable suspicion of illegal activity. *Id.* at 884. The reasonable suspicion standard “requires more than merely an unparticularized hunch, but considerably less than proof of wrongdoing by a preponderance of the evidence.” *United States v. Garza*, 727 F.3d 436, 440 (5th Cir. 2013). *Brignoni-Ponce* enumerated the following eight factors to determine whether reasonable suspicion exists:

1. Proximity to the border;
2. Characteristics of the area;
3. Driver’s behavior;
4. Usual traffic patterns;
5. Aspects of the vehicle;
6. Recent illegal activity; and
7. The arresting agent’s previous experience; and
8. The appearance of passengers. *Brignoni-Ponce* 422 U.S. at 885–86.

Looking to the totality of the circumstances is essential for a reasonable suspicion determination. *Garza*, 727 F.3d at 440. Therefore, not every factor “need weigh in favor of reasonable suspicion” in order to meet the standard. *United States v. Zapata-Ibarra*, 212 F.3d 877, 884 (5th Cir. 2000). When an officer acts without a warrant, the Government has the burden of proving whether reasonable suspicion exists. *United States v. Waldrop*, 404 F.3d 365, 368 (5th Cir. 2005).

### III. DISCUSSION

The Court finds Agent Peterson had a reasonable suspicion to conduct the roving patrol stop. Four of the eight *Brignoni-Ponce* factors weigh in favor of reasonable suspicion: proximity to the border, the driver's behavior, characteristics of the area, and aspects of the vehicle. Two factors weigh against a finding of reasonable suspicion: usual traffic patterns and the arresting agent's previous experience. The final two factors – recent illegal activity and appearance of the passengers – weigh neutrally because they were not taken into the agent's consideration in conducting the stop. The factors when viewed in their totality satisfy the reasonable suspicions standard.

#### A. Proximity to the Border

Proximity to the border is “a paramount factor in determining reasonable suspicion.” *Zapata-Ibarra*, 212 F.3d at 881. This vital element asks whether the agent had “reason to believe that the vehicle had come from the border.” *United States v. Lamas*, 608 F.2d 547, 549 (5th Cir. 1979). While there is no bright-line rule for this factor, generally “fifty miles from the border is . . . too far from the border to support an inference that it originated its journey there.” *United States v. Jones*, 149 F.3d 364, 368 (5th Cir. 1998). Therefore, anything within fifty miles necessarily “implicates” the proximity factor. *Garza*, 727 F.3d at 441; see *United States v. Jacquinot*, 258 F.3d 423, 428 (stating the proximity element has been met if the agent observed the defendant's car within 50 miles of the border); see also *United States v. Villalobos*, 161 F.3d 285, 289 (concluding this factor has been satisfied when the vehicle is only thirty-six miles from the border). The stop here occurred approximately

thirty miles from United States-Mexico border (Dkt. No. 40 at 21). Therefore, this factor weighs in favor of reasonable suspicion.

### **B. Characteristics of the Area**

In determining whether the “characteristics of the area” factor has been met, the Court looks to whether the road is known as a smuggling route. *Garza*, 727 F.3d at 441; see *United States v. Nichols*, 142 F.3d 857, 870 (5th Cir. 1998) (“It is well established that a road’s reputation as a smuggling route adds to the reasonableness of the agents’ suspicion.”).

Agent Peterson testified that he had previous knowledge of smugglers using the west access road to circumvent the checkpoint (Dkt. No. 32 at 3). The Government argues the “characteristics of the area” factor weighs in favor of reasonable suspicion (*id.*). The Defendant states a route’s reputation for smuggling alone is insufficient to establish reasonable suspicion (Dkt. No. 28 at 6). As the Court has already indicated though, there are multiple other factors weighing in favor of the Government. It would be inappropriate to view each factor within a vacuum because they must be viewed in the totality of the circumstances. *Garza*, 727 F.3d at 440; see also *United States v. Chavez-Chavez*, 205 F.3d 145, 148 (stating reputation is established when viewed in the light of other factors).

The Defendant cites multiple cases indicating a road’s reputation for illegal activity is insufficient to justify a stop (Dkt. No. 28 at 6). But in all three of those cases, the Defendants were stopped more than 70 miles from the border. See *Chavez-Chavez*, 205 F.3d 145 at 148 (“The stop occurred 150 to 160 miles north of the border

. . .); *United States v. Diaz*, 977 F.2d 163, 165 (5th Cir. 2000); *see also Olivarez-Pacheco*, 633 F.3d at 403 (stating the stop occurred more than 200 miles from the border). As stated in the previous section, the proximity factor has been satisfied. Therefore, the roads reputation as an alien smuggling route satisfies the “characteristics of the area” factor and weighs it in favor of reasonable suspicion.

### C. Driver’s Behavior

The third factor analyzed in the Court’s inquiry is driver behavior. *Brignoni-Ponce*, 422 U.S. at 885. The driver’s behavior may raise a reasonable suspicion when his driving is erratic or when he attempts to evade the agent. *Id.* Agent Peterson indicated the following behavior was suspicious: (1) Defendant tapped on his brakes and drove 20 miles below the speed limit (Dkt. No. 40 at 18); (2) Defendant rapidly sped up when a tractor trailer pulled in front of Agent Peterson (Dkt. No. 32 at 4). This required the agent to reach speeds of 105 miles per hour to catch up (*id.*); and (3) Defendant wove in and out of traffic (Dkt. No. 40 at 21).

The Court finds the Defendant’s driving behavior weighs in favor of reasonable suspicion. First, this Circuit has concluded deceleration is often innocent, but “such behavior may be suspicious if the driver was not speeding when first observed.” *Jacquinet*, 258 F.3d at 429; *see Villalobos*, 161 F.3d at 291 (“We have held that noticeable deceleration in the presence of a patrol car can contribute to a reasonable suspicion, even though drivers often slow when they see law enforcement personnel.”). Here, the agent gave no testimony indicating the Defendant was speeding prior to decelerating. Therefore, deceleration aids in a finding of reasonable



suspicion. Second, obvious attempts at evading officers support a reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 885. As stated above, Defendant reached high speeds the moment a large tractor-trailer blocked Agent Peterson from following. This behavior can reasonably be interpreted as an attempt at evasion. Third, Agent could see Defendant weaving in and out of traffic (Dkt. No. 40 at 21). This type of behavior is erratic, which contributes to a finding of reasonable suspicion. *See United States v. Medina*, 295 Fed.Appx. 702, 707 (5th Cir. 2008) (stating defendant's speeding assisted in concluding the "driver's behavior" factor).

The Court concludes the Defendant's driving behavior contributed to Agent Peterson's reasonable suspicion. Therefore, this factor weighs in favor of reasonable suspicion.

#### **D. Usual Traffic Patterns**

Courts typically find the "usual traffic patterns" factor weighs in favor of reasonable suspicion when the vehicle is traveling at a suspicious time of day. *See Jacquinot*, 258 F.3d at 429 (stating traveling early on a Sunday morning contributes to a finding of reasonable suspicion). This factor is often only implicated when the agent makes statements pointing to the time of day as a reason for his suspicion. *See United States v. Morales*, 191 F.3d 602, 605 (5th Cir. 1999) (stating the agent's knowledge about usual smuggler travel times contributed to a finding of reasonable suspicion).

Agent Peterson made no comments stating the time of day contributed to a raising of suspicion. Agent Peterson only testified to the time of the stop, 5:40 p.m.

(Dkt. No. 40 at 49). Further, the agent made no comments about when smugglers typically travel, and how such knowledge influenced his conclusion. Therefore, the Court concludes this factor weighs against reasonable suspicion.

### **E. Aspects of the Vehicle**

An unfamiliar vehicle to the area can act as additional weight to establishing reasonable suspicion. *United States v. Inocencio*, 40 F.3d 716, 723 (5th Cir. 1994). Further, individual characteristics of a vehicle, including its cleanliness, can add to a reasonable suspicion. *United States v. Moreno-Chaparro*, 180 F.3d 629, 633 (5th Cir. 1998). Finally, a vehicle registered to a distant area has been found to raise reasonable suspicion where the driver is driving on an indirect road. *Zapata-Ibarra*, 212 F.3d at 884.

Defendant's vehicle was quite clean (Dkt. No. 40 at 17). Agent Peterson took special notice of this because vehicles driven in the area were typically dirty (*id.*). A vehicle's degree of cleanliness can add to a reasonable suspicion. *Moreno-Chaparro*, 180 F.3d at 633. While a clean vehicle may not establish this factor itself, "observation of an unfamiliar and atypical-looking oil field vehicle with no company logos" has been found to assist in a reasonable suspicion determination. *Inocencio*, 40 F.3d at 723. Here, Agent Peterson took special notice of Defendant's vehicle because the type was seldom seen. (Dkt. No. 40 at 12). Agent Peterson further took notice of the lack of company logo (*id.*). By taking notice of the vehicle's unusualness, Agent Peterson added an additional basis to his reasoning.

Finally, Agent Peterson noted the vehicle was registered in Oklahoma (Dkt. No. 40 at 19). The Fifth Circuit has previously held registration in another state or city can add to reasonable suspicion. *Jacquinet*, 258 F.3d at 426. In *United States v. Zapata-Ibarra*, the vehicle was registered in San Angelo, Texas. *Zapata-Ibarra*, 212 F.3d at 883. Instead of traveling on a direct road to San Angelo, defendant traveled on an indirect route. *Id.* at 884. The agent concluded the defendant attempted to use the road as a means of circumventing the checkpoint, and the court found this fairly raised reasonable suspicion. *Id.* Here, the west access road had a much lower speed limit. It would be reasonable for Agent Peterson to believe a vehicle registered in Oklahoma would be traveling using the fastest route. The west access route is objectively slower than using I-35. Therefore, it was reasonable for Agent Peterson to conclude a vehicle registered in Oklahoma using the west access road may have been doing so for suspicious reasons.

Agent Peterson's observations in this case do establish a reasonable suspicion. Therefore, this factor weighs in favor of reasonable suspicion.

#### **F. Recent Illegal Activity**

Agent Peterson made no comment regarding recent illegal activity. Therefore, this factor weighs neutrally. *See United States v. Freeman*, 914 F.3d 337, 343 (finding lack of recent information fails to establish this factor).

#### **G. Arresting Agent's Previous Experience**

This factor considers the agent's previous experience and success rate. The arresting agent "is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling." *Brignoni-Ponce*, 422 U.S. at 885; *see United States v.*

*Neufeld-Neufeld*, 338 F.3d 374, 380 (5th Cir. 2003) (stating the court should look at the totality of the factors in the context of the agent's experience). The amount of time an agent serves is relevant but not dispositive to the question of experience. *Freeman*, 914 F.3d at 346.

In *United States v. Freeman*, the arresting agent had over eight years of experience at a border checkpoint. *Id.* The agent conducted many stops throughout his tenure. *Id.* But the stops prevented criminal behavior only ten percent of the time. *Id.* The Court concluded the agent's low success rate reflected a lack of experience and the stops added little weight to reasonable suspicion. *Id.*

Here, Agent Peterson stated he had served Border Patrol for approximately three years (Dkt. No. 40 at 10). During this time, Agent Peterson had stopped thirty vehicles (*id.* at 56). In those thirty stops, three to four resulted in arrest (*id.*). This gives Agent Peterson an approximately ten percent success rate (*id.*). Because Agent Peterson's success rate is low, his experience in detecting illegal activity is limited. *Freeman*, 914 F.3d at 346 (concluding the agent's low success rate inhibits a finding of reasonable suspicion). The Court appreciates Agent Peterson's dedicated service as a border patrol agent. Nonetheless, the Court finds Agent Peterson's experience in detecting illegal activity weighs against a finding of reasonable suspicion.

#### **H. The Appearance of Passengers**

The "appearance of the passengers" factor weighs neutrally. Agent Peterson made no observations regarding this factor. Therefore, Agent Peterson could not use this factor to help assist his reasoning for suspicion.

### I. Weight of the Factors

“None of the factors alone is dispositive, and courts must analyze them as a whole, rather than each in isolation.” *United States v. Rico-Soto*, 690 F.3d 376, 380 (5th Cir. 2012). The Government has successfully established four of the eight factors. The following factors weigh in favor of the Government: Proximity to the border, characteristics of the area, characteristics of the vehicle, and driver behavior. This Court concludes when the *Brignoni-Ponce* factors are viewed in their totality, reasonable suspicion existed to conduct the permissible roving patrol stop.

### IV. CONCLUSION

For the foregoing reasons, the motion to suppress is **DENIED**.

It is so **ORDERED**.

**SIGNED** February \_\_\_\_, 2023

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XXXXXXXXXX  
United States District Judge

**Applicant Details**

First Name **J. Daniel**  
 Last Name **Elliott**  
 Citizenship Status **U. S. Citizen**  
 Email Address [zfu3zc@virginia.edu](mailto:zfu3zc@virginia.edu)  
 Address

**Address****Street****2401 Arlington Blvd #4****City****Charlottesville****State/Territory****Virginia****Zip****22903****Country****United States**

Contact Phone  
 Number **6159750192**

**Applicant Education**

BA/BS From **Rhodes College**  
 Date of BA/BS **May 2019**  
 JD/LLB From **University of Virginia School of Law**  
<http://www.law.virginia.edu>  
 Date of JD/LLB **May 19, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Virginia Journal of Criminal Law**  
**Virginia Journal of International Law**  
 Moot Court **Yes**  
 Experience  
 Moot Court Name(s) **International and European Tax Moot Court**  
**2023**  
**William M. Lile Moot Court Competition**  
**2022-23**  
**Bryant Moore Civil Rights Moot Court**  
**Competition 2022**  
**Hunton Andrews Kurth Moot Court**  
**National Championship 2023**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships      **No**

Post-graduate Judicial  
Law Clerk      **No**

## Specialized Work Experience

## Recommenders

Mitchell, Greg  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**J. Daniel Elliott**

2401 Arlington Blvd. #4, Charlottesville, VA 22903 • (615) 975-0192 •

zfu3zc@virginia.edu

March 27, 2023

The Honorable Jamar K. Walker  
Walter E. Hoffman  
United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I am a second-year student at the University of Virginia School of Law, and I write to apply for the open clerkship position in your chambers for the term beginning in August 2024.

Prior to my enrollment at UVA, I worked as a legal assistant in the United States Attorney's Office in Memphis, TN, where I had the privilege of seeing litigation at the trial level unfold daily. My hope after graduation is to practice in federal criminal litigation, and the opportunity to clerk in your chambers will allow me unparalleled access to the best legal education in trial practice possible: intensive review of pleadings, motions, and preliminary matters, observation of trial from complaint to verdict, and participation in the drafting of opinions on matters of law I will see unfold daily in my practice. All told, the nearly five years I have spent in service to the federal government have thoroughly prepared and excited me for a chance to clerk in your chambers.

Additionally, my time in the American Mock Trial Association, where I led my team from Rhodes College to a National Championship Final Round and the spot as the #1 ranked team in the nation gave me invaluable litigation experience that has forever changed my life. Now as a volunteer assistant coach with the University of Virginia, I continue to see the life-changing impact of mock trial on young aspiring lawyers, and as both an AMTA alum, coach, and a bisexual man, the opportunity to work alongside a judge like yourself would be extremely professional fulfilling as I strive to work towards a career like yours.

Enclosed please find a copy of my resume, my law school and undergraduate transcripts, and a brief writing sample from my 2022 summer internship at the United States Attorney's Office for the Western District of Virginia. Please let me know if I can provide any additional information about my application; I can be reached at the phone number or email address listed above.

My thanks, and sincerely,

J. Daniel Elliott  
J.D. Candidate  
University of Virginia School of Law '24



## J. Daniel Elliott

2401 Arlington Blvd. #4, Charlottesville, VA 22903 • (615) 975-0192 • zfu3zc@virginia.edu

### EDUCATION

**University of Virginia School of Law**, Charlottesville, VA

*J.D.*, Expected May 2024; *M.A.*, Legal History, Expected May 2024

- Semifinalist (active), 2022-24 William Minor Lile Moot Court Competition
- Best Oral Advocate in Section, 2022 1L Legal Writing Oral Advocacy Program
- 2<sup>nd</sup> Best Speaker, 2023 Hunton Andrews Kurth Moot Court National Championship
- Final Round Oralist, 2023 International & European Tax Moot Court Competition
- Managing Editor, *Virginia Journal of International Law*
- Editor, *Virginia Journal of Criminal Law*
- Legal Writing Fellow for 1Ls, '22-'23; Legal Writing Fellow for LLMs, '23-'24
- Law School Representative & Committee Parliamentarian, University Honor Committee
- Memberships: Law and Public Service Program; ACS; Lambda Law Alliance
- Pro Bono: Legal Aid Justice Center; Colorado Office of the Alternate Defense Counsel; Albemarle County Commonwealth Attorney's Office
- Research Assistance: Prof. Joshua Fischman; Prof. Joe Fore; Dr. Jill Goldenziel (pro bono)

**Rhodes College**, Memphis, TN

*B.A.*, Political Science (Minors: History, International Studies), *summa cum laude*, May 2019

- Phi Beta Kappa
- Two-Time All American Attorney, American Mock Trial Association

### EXPERIENCE

**Venable, LLP**, Washington, D.C.

*Summer Associate*, May 2023 – August 2023

**United States Attorney's Office, Western District of Virginia**, Charlottesville, VA

*Summer Intern*, May 2022 – August 2022

- Drafted motions in limine, motions and petition responses, internal case impression memos, and legal research memos on novel questions of federal criminal law
- Participated in trial preparation through discovery and evidence review, proffers, plea negotiations, and witness preparation

**United States Attorney's Office, Western District of Tennessee**, Memphis, TN

*Legal Assistant, Organized Crime Drug Enforcement Task Force*, December 2019 – July 2021

- Oversaw office's entire COVID-19 response docket, including maintaining database of information about motions, responses, and orders relating to pandemic relief
- Served as primary legal assistant from pre-investigation through discovery, trial preparation, and trial on numerous multi-defendant drug trafficking organization cases, including cases with voluminous physical and electronic discovery involving up to 18 defense counsel
- Reviewed, edited, cite-checked, and filed appellate briefs, motion responses, wiretap applications, and other legal documents
- Drafted and filed search and arrest warrants and Grand Jury subpoenas
- Awarded 2020 Spirit of Excellence Award for work with OCDETF division

*Student Clerk*, August 2016 – May 2019

- Conducted document and discovery review, prepared trial documents, exhibits, and demonstrative aids, and performed office support functions

### INTERESTS

Musical theatre, video and board games, event planning, Survivor

UNIVERSITY OF VIRGINIA  
SCHOOL OF LAW

Name: Joshua Elliott

Date: June 08, 2023

Record ID: zfu3zc

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

**FALL 2021**

LAW	6000	Civil Procedure	4	B+	Nelson, Caleb E
LAW	6002	Contracts	4	B	Gulati, Gaurang Mitu
LAW	6003	Criminal Law	3	A-	Jeffries Jr., John C
LAW	6004	Legal Research and Writing I	1	S	Fore Jr., Joe
LAW	6007	Torts	4	B+	Armacost, Barbara Ellen

**SPRING 2022**

LAW	7692	Persuasion (SC)	1	A-	Shadel, Molly Bishop
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**SPRING 2022**

LAW	6001	Constitutional Law	4	B+	Schauer, Frederick
LAW	6104	Evidence	4	A-	Mitchell, Paul Gregory
LAW	7088	Law and Public Service	3	B+	Kim, Annie
LAW	6005	Lgl Research & Writing II (YR)	2	S	Fore Jr., Joe
LAW	6006	Property	4	B	Nicoletti, Cynthia Lisa

**FALL 2022**

LAW	7019	Criminal Investigation	4	A-	Coughlin, Anne M
LAW	7648	Federal Sentencing (SC)	1	B	Underhill, Stefan R
LAW	8660	Int'l Tax Practic - Fall (YR)	2	CR	Mason, Ruth
LAW	9327	Law & Social Science Colloquium	1	A-	Mitchell, Paul Gregory
LAW	8800	Legal Writing Fellow (YR)	2	CR	Fore Jr., Joe
LAW	9500	Tax Treaties & Other Intl Top	4	A-	Mason, Ruth

**SPRING 2023**

LAW	7637	Trial Advocacy College (SC)	2	CR	Saltzburg, Stephen A
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**SPRING 2023**

LAW	6102	Administrative Law	3	A-	Woolhandler, Nettie A
LAW	7011	Comparative Constitutional Law	3	B+	Law, David S.
LAW	7111	Con Law II: Survy/Civil Liberty	3	B+	Ballenger, James Scott
LAW	8661	Int'l Tax Practic - Spring(YR)	1	A-	Mason, Ruth
LAW	7730	Lawyers, Clerks, Jud Dcisionmkng	1	B	Cui, Gregory
LAW	8801	Legal Writing Fellow (YR)	1	CR	Fore Jr., Joe
LAW	7071	Professional Responsibility	2	B+	Faglioni, Kelly

Record of: Joshua Daniel Elliott

Date Issued: 06-OCT-2021

Student ID: R05513061

Issued To: Joshua D. Elliott

Level: Undergraduate

Course Level: Undergraduate Only Admit: Fall 2015				SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Degrees Awarded Bachelor of Arts 11-MAY-2019				Institution Information continued:			
Major : Political Science				Ehrs: 17.00 GPA-Hrs: 16.00 QPts: 62.80 GPA: 3.93			
Minor : International Studies				Honor Roll			
History				Fall 2016			
Inst. Honors: Phi Beta Kappa				FREN 101	ELEMENTARY FRENCH	4.00 A-	14.80
summa cum laude				HUM 201	SEARCH:VALUES IN HIST & RELIG	4.00 A	16.00
				INTS 120	INTRO/COMPARATIVE POLITICS	4.00 A	16.00
				POLS 262	TRIAL PROCEDURES	0.00 A	0.00
				POLS 301	CIVIL LIBERTIES	4.00 A	16.00
				Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 62.80 GPA: 3.93			
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:				Honor Roll			
201610 ADVANCED PLACEMENT				Spring 2017			
ENGL 265	SPECIAL TOPICS	4.00 AP		FREN 102	ELEMENTARY FRENCH	4.00 A	16.00
FYWS 151	FIRST-YEAR WRITING SEMINAR	4.00 AP		INTS 452	INTERNATIONAL LAW	4.00 A	16.00
HIST 099	TOPIC: AMERICAN HISTORY	4.00 AP		POLS 263	MOCK TRIAL PARTICIPATION	1.00 P	0.00
HIST 099	TOPIC: EUROPEAN HISTORY	4.00 AP		POLS 440	THE CONSTITUTIONAL CONVENTION	4.00 A	16.00
MATH 111	ELEMENTARY PROB & STATISTICS I	4.00 AP		Ehrs: 13.00 GPA-Hrs: 12.00 QPts: 48.00 GPA: 4.00			
MATH 121	CALCULUS I	4.00 AP		Summer 2017			
Ehrs: 24.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00				PHED 107	GOLF FOR BUSINESS PURPOSES	0.00 P	0.00
INSTITUTION CREDIT:				Ehrs: 0.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00			
Fall 2015				Fall 2017			
BUS 265	TOPIC:CEO FORUM	1.00 P	0.00	FREN 201	INTERMEDIATE FRENCH	4.00 A-	14.80
HUM 101	SEARCH:VALUES IN HIST & RELIG	4.00 B+	13.20	INTS 256	WEAPONS OF MASS DECEPTION	4.00 A	16.00
POLS 151	UNITED STATES POLITICS	4.00 A	16.00	PHED 107	GOLF FOR BUSINESS PURPOSES	0.00 P	0.00
POLS 262	TRIAL PROCEDURES	4.00 A	16.00	POLS 262	TRIAL PROCEDURES	0.00 A	0.00
RUSS 255	CATHERINE/GREAT&ENLIGHTENMNT	4.00 A	16.00	POLS 270	RESEARCH METHODS	4.00 A	16.00
Ehrs: 17.00 GPA-Hrs: 16.00 QPts: 61.20 GPA: 3.83				POLS 340	THE AMERICAN PRESIDENCY	4.00 A	16.00
Dean's List				Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 62.80 GPA: 3.93			
Spring 2016				Honor Roll			
HUM 102	SEARCH:VALUES IN HIST & RELIG	4.00 A-	14.80	***** CONTINUED ON PAGE 2 *****			
INTS 100	INTRO TO INTERNATNL RELATIONS	4.00 A	16.00				
POLS 263	MOCK TRIAL PARTICIPATION	1.00 P	0.00				
POLS 264	RIGHTS OF THE ACCUSED	4.00 A	16.00				
POLS 280	TOPIC:BIOLOGY & POLITICS	4.00 A	16.00				
***** CONTINUED ON NEXT COLUMN *****							

*Justine*  
Associate Provost

Record of: Joshua Daniel Elliott

Date Issued: 06-OCT-2021

Student ID: R05513061

Level:

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	***** TRANSCRIPT TOTALS *****							
				Earned Hrs	GPA Hrs	Points	GPA				
Institution Information continued:				TOTAL INSTITUTION	137.00	131.00	517.60 3.95				
Spring 2018				TOTAL TRANSFER	24.00	0.00	0.00 0.00				
CHEM 105	TOPIC:CHEM AND CRIME	4.00 A	16.00	OVERALL	161.00	131.00	517.60 3.95				
HIST 395	THE IMPERIAL IDEA	4.00 A	16.00								
HIST 481	COLD WAR IN EAST ASIA	4.00 A	16.00					***** END OF TRANSCRIPT *****			
INTD 331	INTRO TO POSTGRAD SCHOLARSHIP	1.00 P	0.00								
INTS 265	TOPIC:PUTIN'S RUSSIA & MEDIA	4.00 A	16.00								
POLS 263	MOCK TRIAL PARTICIPATION	1.00 P	0.00								
POLS 399	PRE-HONORS JR TUTORIAL	1.00 A	4.00								
Ehrs: 19.00 GPA-Hrs: 17.00 QPts: 68.00 GPA: 4.00											
Honor Roll											
Summer 2018											
POLS 216	INTRO TO PHILOSOPHY OF LAW	4.00 A	16.00								
Ehrs: 4.00 GPA-Hrs: 4.00 QPts: 16.00 GPA: 4.00											
Fall 2018											
HIST 233	US IN THE 20TH CENTURY	4.00 A	16.00								
HIST 352	US CONSTITUTNL HIST SINCE 1865	4.00 A	16.00								
PHED 254	WEIGHTLIFTING	0.00 P	0.00								
POLS 262	TRIAL PROCEDURES	0.00 A	0.00								
POLS 485	SENIOR SEMINAR	4.00 A	16.00								
POLS 495	HONORS TUTORIAL	4.00 A	16.00								
Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 64.00 GPA: 4.00											
Spring 2019											
BUS 200	TAXATION/WORKING POOR	2.00 A	8.00								
HIST 232	US IN THE 19TH CENTURY	4.00 A	16.00								
INTS 254	S AFRICA THRU DOCUMENTARY FILM	4.00 A	16.00								
POLS 263	MOCK TRIAL PARTICIPATION	1.00 P	0.00								
POLS 280	TOPIC:HABITS OF DEMOCRACY	4.00 A	16.00								
POLS DI	CONFRONTING THE COURT	4.00 A	16.00								
Ehrs: 19.00 GPA-Hrs: 18.00 QPts: 72.00 GPA: 4.00											
Honor Roll											
***** CONTINUED ON NEXT COLUMN *****											

*Justine*  
Associate Provost